473

SUPREME COURT OF THE UNITED STATES.

No. ~~109.~~ 24

THE BANK OF GEORGIA, APPELLANT,

VERSUS

JAMES HIGGINBOTTOM, ADMINISTRATOR OF WM. S. GILLETT ET AL.

APPEAL FROM THE CIRCUIT COURT UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

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THE UNITED STATES OF AMERICA, *Sixth Circuit, South Carolina District—In equity.*

Bill. Humbly complaining, the Bank of Georgia, citizens of the State of Georgia incorporated by that name, show to your honors, that heretofore, and before the seventeenth day of October, one thousand eight hundred and twenty-one, William S. Gillett, a citizen of the State of South Carolina, was indebted to your orators in a large sum of money, for money lent and advanced to him, and not being able to pay according to his contract, treated with your orators for time, to wit, for one, two, three, and four years, to pay the principal of the said debt, and proposed to pay down the interest in arrear, and confess a judgment for the amount due; and to induce your orators to concede to him the indulgence aforesaid, gave your orators his assurance that his estate was unincumbered, and that the debt would be well secured by such judgment. That your orators, trusting to this assurance, agreed to give him time, and the judgment was confessed according to agreement in the court of the United States for the sixth circuit at Charleston, and was entered upon the day aforesaid, for seven thousand eight hundred and forty-nine dollars, and costs, at the suit of your orators. That your orators gave the time which was agreed on, but the said William S. Gillett could not comply with his engagements, and a large sum, to wit, six thousand dollars, with interest from the sixth day of July, one thousand eight hundred and twenty-four, is still in arrear, and unpaid to your orators on the said judgment. Your orators further show to your honors, that, to have satisfaction of their judgment, they lately sued out of the said court a writ of "fieri facias" against the said William S. Gillett on the said judgment; and, by virtue of the said writ, the marshal of this court took in execution a number of the slaves of the said William S. Gillett, and exposed them to sale, and levied a large sum, sufficient, as your orators believe, to satisfy their debt; and your orators had well hoped that the money so levied would be applied to pay and satisfy their judgment, but one James Higginbottom, and one William Provost, citizens of the State of South Carolina aforesaid, claim to have the said money applied to the payment of a judgment for thirty thousand dollars, which was confessed to them by the said William S. Gillett on the first day of June, one thousand eight hundred and nineteen, in the court of common pleas for Barnwell district in South Carolina. But your orators in fact say, that the said William S. Gillett, at the time of confessing the said judgment, owed to the said James Higginbottom and William Provost nothing, and this your orators believe is admitted by the said Provost and Higginbottom, as well as by Wm. S. Gillett himself; but your orators are informed, and have notice, that the said parties pretend that the judgment aforesaid was confessed to the said Higginbottom and Provost, in trust for the devisees of the late Dr. Elijah Gillett; but your orators are advised that the said James Higginbottom and William Provost were neither the guardians, attorneys, or agents of the devisees of Dr. Gillett, and that the judgment aforesaid is purely voluntary, and the same cannot be upheld by a consideration to which the plaintiffs on the record are strangers. But even if such judgment could derive any support from a consideration of that kind, your orators insist that, at the date of the said judgment, the said Wm. S. Gillett was not indebted to the devisees of Dr. Elijah Gillett in thirty thousand dollars, nor in any such sum. And your orators further show unto your honors that Dr. Elijah Gillett died in the year one

thousand eight hundred and eighteen, and that Wm. S Gillett proved his will on the third day of December in the same year. That, by his will, the testator authorized his executors, if need be, to sell such part of his estate as may be beneficial to his heirs, or expedient for them, of which will he appointed several executors, none of whom qualified except the said Wm S. Gillett. That he undertook to exercise the power of sale given by the will, without any respect to the restrictions of the said power expressed in the words of the will, and exposed to sale a great part of the testator's estate. That he also exposed to sale, as estate of the testator, a number of negroes which the testator had given to him in his life time, and to which his title was complete. That, at the sale, he was himself the chief purchaser as well of what belonged to the devisees as of what belonged in fact to himself. Your orators are advised that such pretended sale, where the executor is both seller and buyer, is not voidable only, but merely void, as it is essential to a contract of sale not only that there be a thing to be sold, and a price to be paid, but a seller and a buyer. That the devisees of Dr. Gillett were at the time of the said sale minors, and neither gave, nor could give any sanction. That the said Wm S. Gillett was then indebted to your orators for the same loans for which he afterwards confessed a judgment, and your orators insist that he could not at that time make any voluntary disposition of his property, and that, even if the judgment which he confessed in the month of June, one thousand eight hundred and nineteen, was in trust for the divisees of his father, it is voidable except for so much as he then really owed, and, although his conduct, in agreeing to pay the devisees of his father for his own property, may be liberal, yet in regard to creditors the same can be put on no higher footing than a voluntary bond or confession of judgment. Your orators further show to your honors that they had no notice of the judgment confessed by the said Wm. S. Gillett until lately, and that in their dealings they relied on his assurance that his property was unincumbered. That the whole estate of the said Wm. S Gillett will not now pay off the judgment confessed to Higginbottom and Provost, and your orators will lose the whole of their money unless they can obtain relief in this honorable court against the said judgment. And your orators had well hoped that the said Wm. S. Gillett, James Higginbottom, and Wm. Provost, would agree to allow your orators to be paid out of the moneys levied by the marshal as aforesaid; or, at all events, that they would not insist on the judgment and execution aforesaid, except as a security for what was really due at the date of the said judgment by the said Wm. S. Gillett as executor of his father to the devisees, excluding therefrom the price of the property which had been set down to him as purchaser, but which in fact was not, and could not, be so transferred to him. But now so it is, may it please your honors, that the said Wm. S. Gillett, James Higginbottom, and Wm. Provost, combining and confederating with divers other persons to your orators unknown (whose names when discovered they pray may be inserted in this bill, with proper and apt words to charge them) refuse to allow the just claims of your orators, and sometimes pretend that the judgment confessed by the said Wm. S. Gillett to the other defendants is on good consideration, and bona fide. Whereas, your orators insist that the said judgment is voluntary; and they expressly charge that, at the time of confessing the said judgment, the said Wm. S. Gillett did not intend to do more than to give the said James Higginbottom and Wm. Provost a lien in behalf of his father's devisees on the property which had been, at a public sale, set down to him as purchaser. That such

supposed purchase was the sole consideration that moved him to confess the said judgment, and that he did expressly declare the trust of the said judgment to be to secure the devisees of his father to the extent of the property in his hands which had been devised to them. And, again, the said James Higginbottom and William Provost pretend that the said judgment is in trust for the devisees of Dr. Gillett; whereas your orators do charge that the trust of the said judgment was confined to the property of the said devisees in the hands of the said Wm. S. Gillett. And, again, the said defendants pretend that your orators had notice of the said judgment. Whereas your orators in fact say that they had no notice of said judgment until lately, and that, on the treaty between them and the said Wm. S. Gillett about giving him time, the said Wm S. Gillett assured them that the property on which they would, by the judgment proposed to be confessed, have a lien, was free and unincumbered, which declaration the said Wm. S. Gillett, since your orators have had notice of the judgment confessed to Higginbottom and Provost, has explained, by saying that he meant that all the property in his possession, except what he bought at the sale of his father's estate aforesaid, was free and unincumbered. But, again, the said Wm. S. Gillett and the other defendants refuse to give your orators any satisfaction in the premises; all which actings of the said Wm. S. Gillett, James Higginbottom, and Wm. Provost, are contrary to equity and good conscience, and tend to the manifest injury of your orators. In tender consideration whereof, and for as much as your orators are remediless at law, and can receive relief only in the court of chancery, to the end therefore that the said William S. Gillett, James Higginbottom, and William Provost, may true and perfect answer make to the premises, and that as fully as if the same were here again repeated and interrogated, and especially that they may set forth and show how, why, and upon what conditions, understanding, or consideration, the judgment aforesaid was confessed; and whether it was not intended and understood to be a security for the devisees of Dr. Gillett, commensurate with the property of the estate of Dr. Gillett, which had been set down at public sale to him, the said William S. Gillett, as purchaser; and that the said William S. Gillett may set forth and declare whether he did not, at the said sale, set up, as property of his late father, divers negroes that in fact had been given to him by his father either in his life time or by will; and that the said judgment may be set aside, or may stand as security only to the extent of the property of the devisees in the hands of the said William S. Gillett, or for the amount really and bona fide due at the time of the said confession, and that the property in the hands of the said William S Gillett, which was set down to him at public sale, or otherwise, as purchaser, may be declared the property of the estate, and such pretended sale and purchase null and void; and that your orators may have such other and further relief as the nature of this case may require, and to your honors may seem meet, may it please your honors to grant unto your orators your most gracious writ of subpœna to be directed to the said William S. Gillett, James Higginbottom, William Provost, and to , who has intermarried with Gillett, Alexander Hamilton Gillett, Lucy Gillett, Lavinia Gillett, and Aaron Gillett, devisees of the said Dr. Elijah Gillett, citizens of the State of South Carolina, commanding them, personally, to be and appear before this honorable court at a certain day, and under a certain penalty therein to be inserted, then and there full and perfect answer to make to all and singular the premises, and to stand to and abide by such orders and decree in the

same as to your honors may seem fit, and agreeable to equity and good conscience. And your orators, as in duty bound, will ever pray, &c.

PETIGRU & CRUGER, *Comp'ts' solic'rs.*

Filed April 4, 1827.

THE STATE OF SOUTH CAROLINA, *Barnwell District.—To all and singular the Sheriffs of the said State, greeting:*

Proceedings at law. Writ. You, and each of you, are hereby commanded, without delay, to attach the body of William S. Gillett wheresoever he may be found within your, and each of your, respective districts, so that you compel him to be and appear before the justices of the said State, at the court of common pleas, to be holden at Barnwell court-house, on the first Monday after the fourth Monday of October next, to answer to James Higginbottom and William Provost in a plea of trespass on the case, and so forth; and also for certain promises and assumptions by the said William S. Gillett, to the said James Higginbottom and William Provost, made and not performed, to their damage sixty thousand dollars; and have you this writ before the clerk of the said court at Barnwell court-house, fifteen days next before the sitting thereof. Witness, the honorable J. F. Grimke, esquire, senior associate justice of the said State, at Barnwell court-house, the twenty-ninth day of March, in the year of our Lord, one thousand eight hundred and nineteen, and in the forty-third year of the sovereignty and independence of the United States of America.

A. PATTERSON, *Plaintiff's Att'y.* [L. S.]
ORASMUS D. ALLEN, *C. C. P.*

THE STATE OF SOUTH CAROLINA, *Barnwell District, to wit:*

Declaration. William S. Gillett was attached to answer to James Higginbottom and William Provost, of a plea of trespass on the case, and so forth; and whereupon the said James Higginbottom and William Provost, by Argus Patterson, their attorney, complain that, whereas the said William S. Gillett, on the first day of June, in the year of our Lord one thousand eight hundred and nineteen, at Barnwell court-house, in the district and State aforesaid, and within the jurisdiction of this court, did make his certain note in writing, commonly called a promissory note, with his own proper hand thereunto subscribed, bearing date the day and year last mentioned; by which said note, the said William S Gillett did promise to pay, or cause to be paid, unto the said James Higginbottom and William Provost, or order, the full and just sum of thirty thousand dollars, on demand, for value received; by reason whereof, and by force of the statute in such case made and provided, and made of force in this State, the said William S. Gillett became liable to pay to the said James Higginbottom and William Provost the said sum of money in the said note contained, according to the tenor and effect of the said note: and being so liable, he, the said William S. Gillett, afterwards, to wit, the same day and year last mentioned, at Barnwell court-house aforesaid, and within the jurisdiction of this court, in consideration thereof, upon himself did assume, and to the said James Higginbottom and William Provost then and there faithfully promised that he, the said William S. Gillett, would well and truly pay to the said James Higginbottom and William Provost the said sum of money in the said note mentioned, according to the tenor and effect of the said note; and whereas said defendant afterwards, to wit, on the day and year last mentioned, at Barnwell court-

house aforesaid, was indebted to the said plaintiffs in thirty thousand dollars for money by the said plaintiffs before that time laid out, expended, and paid for said defendant at his special instance and request; and for other money by the said plaintiffs before that time lent and advanced to the use of the said defendant, and at his special instance and request; and for other money by the said defendant before that time had and received to the use of the plaintiffs, and, being so indebted, the said William S. Gillett, in the consideration thereof, afterwards, to wit, the same day and year last aforesaid, at Barnwell court-house, in the district and State aforesaid, assumed upon himself, and to the said James Higginbottom and William Provost then and there faithfully promised that he, the said William S. Gillett, the last mentioned sum of thirty thousand dollars to the said James Higginbottom and William Provost would well and truly pay and content, whenever after he, the said William S. Gillett, should be thereunto requested. Yet the said William S. Gillett his several promises and assumptions aforesaid made, in no wise regarding, but contriving and fraudulently intending the said James Higginbottom and William Provost in this behalf, craftily and subtlely to deceive and defraud, the said several sums of money abovementioned, or any part thereof to the said James Higginbottom and William Provost has not paid (although oftentimes afterwards required so to do,) but the same to the said James Higginbottom and William Provost to pay the said William S. Gillett has hitherto refused and still doth refuse, to the damage of the said James Higginbottom and William Provost sixty thousand dollars, and therefore they bring suit, and so forth.

A. PATTERSON, *Plaintiff's Att'y.*

Copy Note.

BARNWELL, *June* 1, 1819.

On demand, I promise to pay, to the order of Messrs. James Higginbottom and William Provost, thirty thousand dollars for value received

WM. S. GILLETT.

Confession.

I confess judgment in this case for thirty thousand dollars and costs.

WM. S. GILLETT.

Judgment. Spring term, 1819.—And now at this day, to wit, the first Monday after the fourth Monday in March, in the year of our Lord one thousand eight hundred and nineteen, comes here the said William S. Gillett, in his own proper person, and defends the wrong and injury when, and so forth; and says that he cannot deny the said action of the said James Higbottom and William Provost, nor but that he did promise and assume, in manner and form as the said James Higginbottom and William Provost have above thereof complained against him; nor but they have sustained damages by occasion of the non-performance of the said several promises and assumptions to thirty thousand dollars, as they, the said James Higginbottom and William Provost, have above in their said declaration supposed; and hereupon, the said James Higginbottom and William Provost pray that the said damages so acknowledged, together with their expenses and costs laid out by them about their suit in this behalf, may be adjudged to them, and so forth: therefore, it is considered that the said James Higginbottom and William Provost recover against the said William S. Gillett their damages aforesaid,

so by him in form aforesaid acknowledged, and also twenty dollars twelve cents for their costs and charges by the court here adjudged to them by their assent, which said damages, costs, and charges, in the whole amount to thirty thousand and twenty dollars twelve cents; and he the said William S. Gillett, in mercy and so forth. Judgment signed the 1st June, 1819, and fi. fa. issued the same day.

ORASMUS D. ALLEN, *C. C. P.*

THE STATE OF SOUTH CAROLINA.—*To all and singular the Sheriffs of the said State, greeting:*

Fi. fa. You and each of you are hereby commanded, without delay, that, of the goods, chattels, houses, and lands, and other hereditaments and real estates of William S. Gillett, you cause to be levied the sum of thirty thousand and twenty dollars twelve cents, which James Higginbottom and William Provost, in the court of common pleas, before the justices of the said court at Barnwell court-house, lately recovered against the said William S. Gillett, for damages which they sustained as well by reason of certain promises and assumptions by the said William S. Gillett to the said James Higginbottom and William Provost made and not performed, as for their costs and charges by them in and about prosecuting their suit in that behalf, whereof the said William S. Gillett is convicted as appears on record. And that you have the money before the said justices of the said court of common pleas at the court to be holden at Barnwell court-house on the first Monday after the fourth Monday in October next, to render to the said James Higginbottom and William Provost for their damages, costs, and charges aforesaid; and have you this writ before the clerk of the said court at Barnwell court-house, fifteen days next before the sitting thereof. Witness, J. F. Grimke, senior associate justice of the said State, at Barnwell court-house, on the twenty eighth day of March, in the year of our Lord one thousand eight hundred and nineteen, and in the forty-third year of the sovereignty and independence of the United States of America.

A. PATTERSON, *Plaintiff's Att'y.* [L. S.]
ORASMUS D. ALLEN, *C. C. P.*

Judgment, $30,000; attorney's costs, $14 12; sheriff's do., $1; clerk's do., $5; amount of costs, $20 12. Entered in my office 19th July, 1819.

H. D. DUNCAN, *S. B. D.*

Renewed, January 26, 1824.

THE STATE OF SOUTH CAROLINA.—*To all and singular the Sheriffs of the said State, greeting:*

Fi. fa. You and each of you are hereby commanded, as heretofore commanded, without delay, that, of the goods, chattels, houses, and lands, and other hereditaments and real estates of William S. Gillett, you cause to be levied the sum of thirty thousand and twenty dollars twelve cents, which James Higginbottom and William Provost, in the court of common pleas, lately recovered against the said William S. Gillett for damages which they sustained as well by reason of certain promises and assumptions by the said William S. Gillett to the said James Higginbottom and William Provost made and not performed, as for their costs and charges by them expended, in and about prosecuting their suit in that behalf; whereof the said William S. Gillett is convicted as appears on record. And, also, that you cause to

be levied the interest upon thirty thousand dollars, the principal of said debt, from the first day of June, in the year of our Lord one thousand eight hundred and nineteen, the day on which judgment is entered in this case, up to the day on which levy shall be made, and satisfaction entered on this execution. And that you have the money before the said justices of the said court of common pleas, at the court to be holden at Barnwell, on the first Monday after the fourth Monday in March next, to render to the said James Higginbottom and William Provost for their damages, costs, and charges aforesaid. And have you this writ before the clerk of the said court at Barnwell, fifteen days next before the sitting thereof. Witness, the honorable E. H. Bay, senior associate justice of the said State, at Barnwell, the third day of November, in the year of our Lord one thousand eight hundred and twenty-three, and in the forty-eighth year of the sovereignty and independence of the United States of America.

ANGUS PATTERSON, *plaintiff's att'y.* [L. S.]
ORASMUS D. ALLEN, *C. C. P.*

Judgment, $30,000; attorney, $14 12; renewal, $1 7; clerk, $5; renewal, $0 62½; sheriff, $1; amount of costs, $21 81¼. Entered in my office, February 3, 1824.

JOHN WALKER, *S. B. D.*

Renewed the 29th of December, 1824.

THE STATE OF SOUTH CAROLINA.—*To all and singular the Sheriffs of the said State, greeting:*

Fi. fa. You and each of you are hereby commanded, as often heretofore commanded, without delay, that, of the goods, chattels, houses, and lands, and other hereditaments and real estates of William S. Gillett, you cause to be levied the sum of thirty thousand and twenty dollars twelve cents, which James Higginbottom and William Provost, in the court of common pleas, lately recovered against the said William S. Gillett for damages which they sustained as well by reason of certain promises and assumptions by the said William S. Gillett to the said James Higginbottom and William Provost made and not performed, as for their costs and charges by them expended in and about prosecuting their suit in that behalf, whereof the said William S. Gillett is convicted, as appears on record. And, also, that you cause to be levied the interest upon thirty thousand dollars, the principal of said debt, from the first day of June, in the year of our Lord one thousand eight hundred and nineteen, the day on which judgment is entered in this case, up to the day on which levy shall be made and satisfaction entered on this execution. And that you have the money before the said justices of the said court of common pleas, at the court to be holden at Barnwell, on the first Monday after the fourth Monday in March next, to render to the said James Higginbottom and William Provost for their damages, costs, and charges aforesaid. And have you this writ before the clerk of the said court, at Barnwell, fifteen days next before the sitting thereof. Witness, the honorable E. H. Bay, senior associate justice of the said State, at Barnwell, on the first day of November, in the year of our Lord one thousand eight hundred and twenty-four, and in the forty-ninth year of the sovereignty and independence of the United States of America.

A. PATTERSON, *plaintiff's att'y.* [L. S.]
ORASMUS D. ALLEN, *C. C. P.*

Judgment, $30,000, interest from June 1, 1819; attorney $14 12; two renewals, $2 14; clerk, $5; two renewals, $1 25; sheriff, $1; renewal 96 cents; amount of costs, $24 47;—lodged to bind. Entered in my office December 31, 1824.

JOHN WALKER, *S. B. D.*

The above exemplification certified by O. D. Allen, clerk of said court, with the seal thereof, 8th day of April, 1828.

Assignment of Trust.

SOUTH CAROLINA:

Whereas Elijah Gillett, late of Barnwell district, in the State aforesaid, being seized and possessed of a considerable real and personal estate, on or about the ninth day of January, 1817, executed his last will and testament, and thereof appointed Elizabeth Gillett, William S. Gillett, Robert, Isaac, and William Scarborough, executrix and executors, and also thereby appointed them guardians of his younger children, and sometime afterwards departed this life. And whereas the said Elizabeth Gillett departing this life before the testator, and the said Robert, Isaac, and William Scarborough, declining to qualify or act as executors to the said last will and testament, was proved by the said William S. Gillett, who has assumed upon himself the sole administration of the testator's estate as well as the guardianship of the younger children. And whereas the said William S. Gillett, in order to secure and assure to his younger brothers and sisters, being the younger children aforesaid, their interest in the estate of the testator by and under the said last will and testament, or otherwise, on or about the first day of June, 1819, confessed judgment to us, James Higginbottom and William Provost, in the court of common pleas for Barnwell district, for the sum of thirty thousand dollars, with interest for the use and benefit of the testator's younger children aforesaid, and for and upon no other use, trust, interest, or purpose whatsoever. Now, know all men by these presents, that, at the instance and request of the said Robert, Isaac, and William Scarborough, we, the said James Higginbottom and William Provost, do assign, transfer, and make over the said judgment, and the interest that has or shall accrue thereon, to the said Robert, Isaac, and William Scarborough, and the survivor of them, their, or either of their executors, administrators, or assigns, in trust for the use and benefit of the testator's younger children, to wit, Alexander H. Gillett, Aaron Gillett, Julia Gillett, Lucy J. Gillett, and Lavinia Gillett, for the purpose of securing and assuring to them respectively their interest in the testator's estate, and for no other purpose whatsoever; and upon this further trust, that they, the said Robert, Isaac, and William Scarborough, or either of their executors or assigns shall and will, as soon as the said William S. Gillett shall come to a fair and final settlement with his younger brothers and sisters aforesaid, of and concerning his actings and doings as executor and guardian aforesaid, and shall and will pay over and deliver to them respectively, the legacies, parts, and distributive shares, which they, or either of them, are, or shall be, entitled to receive from the testator's estate by virtue of the said last will and testament, or otherwise, the said Robert, Isaac, and William Scarborough, their, or either of their executors, administrators, or assigns, shall forthwith enter satisfaction on the said judgment, and therefrom, and from every part thereof, absolutely dis-

charge and acquit the said William S. Gillett, his heirs, executors, and administrators, for ever. Witness, our hands and seals, this 12th day of April, 1825.

JAMES HIGGINBOTTOM. [SEAL.]
WM. PROVOST. [SEAL.]

Signed, sealed, and delivered, in the presence of
GEO. W. COLLINS.
THOMAS. B. SMITH.

Answer to Bill.

THE UNITED STATES OF AMERICA, *State of South Carolina.—In equity:*

The joint and several answer of James Higginbottom and Julia his wife, George W. Collins and Lucy his wife, to the bill of complaint of the Bank of Georgia, complainants. These defendants, saving and reserving to themselves now and at all times hereafter, all and all manner of benefit and advantage of exception to the uncertainties in the complainant's bill of complaint contained, for answer thereunto, or to so much thereof as they are advised it is material for them, or either of them, to make answer unto; they answering say, that Dr. Elijah Gillett, late of Barnwell district, in the State aforesaid, being seized and possessed of a considerable real and personal estate, on or about the ninth day of January, 1817, duly made and published his last will and testament, and thereby devised and bequeathed his estate to his wife (who departed this life before the testator) and to his children, and thereof appointed his son William S. Gillett and other persons executors and guardians of his children, and sometime afterwards departed this life, leaving such last will not altered, revoked, or cancelled; whereupon, the other persons named executors declining to qualify, the defendant, William S. Gillet, proved the will, and took upon himself the sole management of the testator's estate, as well as the guardianship of the testator's children. And these defendants, further answering, say, that on or about the seventh day of December, 1818, the personal estate of the testator, including ninety-eight slaves, was appraised at about $56,474. That on or about the 22d day of March, 1819, and after William S. Gillett had selected or had taken by lot as many of the slaves as he conceived himself entitled to, he sold about eighty-three negroes, and all the testator's other personal estate, at public auction. That the proceeds of such sale exceeded forty thousand dollars, and that William S. Gillett was himself a principal purchaser, but to what amount these defendants are not informed. And these defendants, further answering, say, that the defendant, William S. Gillett, being in possession of the whole of the testator's personal estate, or of the proceeds for which the same was sold, on or about the first day of June, 1819, confessed a judgment to James Higginbottom and William Provost for $30,000, (being about, as it was believed, the amount of the testator's estate in his hands,) as the complainants in and by their bill allege, for the use and benefit of the testator's younger children, namely, Alexander H. Gillett, who has since departed this life intestate and unmarried; Aaron Gillett, who is still an infant; Julia, who has since intermarried with James Higginbottom; Lucy J., who has intermarried with George W. Collins; and Lavinia Gillett, who is still an infant and unmarried; and for the purpose of securing to them their interest in the testator's estate, and upon trust that they, the said James

Higginbottom and Wm. Provost, their executors, administrators, or assigns, should, as soon as the said William Gillett would come to a final settlement with his younger brothers and sisters aforesaid, of and concerning his actings and doings as executor and guardian aforesaid, and pay over and deliver to them, respectively, the legacies, parts and distributive shares, which they, or either of them, should be entitled to receive from the testator's estate by virtue of the said last will and testament or otherwise; the said James Higginbottom and William Provost, their executors, administrators, or assigns, should forthwith enter satisfaction on the said judgment, and therefrom absolutely discharge and acquit the said William S. Gillett, his heirs, &c., forever. The defendants admit that James Higginbottom and William Provost were not, at the time said judgment was confessed, the guardian's attorneys, or agents of the devisees of Dr. Gillett, or in any way personally interested in the matter, but were named plaintiffs on the record, as these defendants believe, because the friends and relatives of the devisees, whose duty it might be to interpose in their behalf, did not then, and do not now, reside in this State. And these defendants submit whether it was not legal as well as equitable, under such circumstances, for James Higginbottom and William Provost to take the said judgment in behalf of the infant devisees and as their next friends. These defendants do not know what William S. Gillett owed the devisees at the time the judgment was confessed, but there was at that time in his hands the amount of the sale, except so much as he expended in the payment of debts and other contingencies. By his accounts filed in the ordinary's office, it appears that the balance due the estate on first of January, 1820, including bonds taken by him at the sale, was about $38,000: and these defendants believe that the balance due the devisees at this time is not much less than thirty thousand dollars, and they submit whether the said judgment was not founded on a good consideration. These defendants do not allege that *that* the said William S Gillett was in insolvent circumstances, because the state of his affairs is and was unknown to them; but, admitting his circumstances to have been embarrassed at the time he assumed the management of the testator's estate, in confessing the judgment for the benefit of the devisees he did no more than what a court of equity would, on application, have compelled him to have done. And these defendants are advised that an act done under such circumstances cannot be considered voluntary, particularly in a court of equity. And these defendants, further answering, say, that the said William S. Gillett, as executor, sold several parcels of the testator's real estate for which he is accountable. These defendants are advised that the devisees may consider the sale void as to such parts of the testator's personal estate as were purchased by William S. Gillett, or consider it valid, and hold him accountable for the amount such property was set down to him at as purchaser, at their election; but they are not advised that William S. Gillett or his creditors, who have no equity or interest in the matter, except such as they derive through him, can treat the sale as void or voidable. These defendants, further answering, say, that the devises and bequests to William S. Gillett, in the testator's will, were made on condition that he would relinquish his right and title to certain negroes previously granted to him; and if the said William S Gillett made his election to take under the will, as they suppose he did, then the charge made by the complainants in their bill that William S. Gillett sold certain negroes as part of the estate, which were in fact his own property, is unfounded, but whether the charge is well founded or not, these defendants cannot say.

These defendants insist that the claim of the devisees of Dr. Gillett on William S. Gillett is founded in equity and good conscience, and that they ought not to be deprived of the legal lien intended to be given them by the judgment to James Higginbottom and William Provost. They cannot say whether the said judgment was intended as a partial lien, or to extend to all the property of the said William S. Gillett: they however believe that the judgment was considered the best security which it was in his power to give, and that it was intended to be a security for the balance that might be found due to the devisees, without reference to any particular part of his estate. These defendants admit that the complainants lately caused a number of negroes to be sold as the property of William S. Gillett, under a fi fa. and that they did give notice to the marshal of their lien under the said judgment to the proceeds of said sale. They, however, at the same time, notified the complainants of the conditions on which the judgment was confessed of their willingness to come to a fair settlement with William S. Gillett, and, upon receiving payment of such balance as might thereupon be found due to them, to release all their interest in the judgment. These defendants regret that it is necessary for them to come into collision with the creditors of William S Gillett, disclaim the wish or intention of interfering further than necessary to secure their rights, and deny all and all manner of combination and confederacy wherewith they stand charged in and by the said bill of complaint; and pray to be discharged, with their costs in this behalf sustained.

J. GADSDEN, *Def't's Solicitor.*

SOUTH CAROLINA, *Barnwell District:*

Personally appeared James Higginbottom, Julia Higginbottom, George W. Collins, and Lucy J. Collins, and, being duly sworn, say that the matters and things set forth in the foregoing answer upon their own knowledge are true; and that such facts as are therein stated on the information of others they believe to be true.

JAMES HIGGINBOTTOM.
JULIA HIGGINBOTTOM.
GEO. W. COLLINS.
LUCY J. COLLINS.

Sworn to before me, this 7th of November, 1827.

RICHD. JOHNSON, *J. Q.*

Filed 10th January, 1828.

Answer to Bill.

UNITED STATES OF AMERICA, *Sixth Circuit Court, State of South Carolina.—In equity:*

The separate answer of William S. Gillett to the bill of the complainants of the Bank of the State of Georgia. This defendant, saving and reserving to himself, now and at all times hereafter, all and every manner of advantage and benefit of the exception to the manifold errors, uncertainties, and insufficiencies in the complainants' bill contained, for answer thereto, and to so much thereof as he is advised it is material for him to answer unto, he an-

swers and says, he admits that heretofore, to wit, in the year of our Lord one thousand eight hundred and twenty-one, and before that time, William S. Gillett and Company were indebted to the complainants to a considerable amount, and that he negotiated with them for indulgence: this defendant does not recollect that he represented to the parties or their agents that his property was wholly unincumbered. The strongest expression which he ever recollects ever to have used in regard to that point, he believes to be contained in his letter to his agents of the fourteenth of August, one thousand eight hundred and twenty-one, wherein he says, "and whomsoever they authorize and appoint as their agent, I will satisfy that the property is unincumbered, or furnish them with the necessary documents to prove it so;" and, in the same letter, this defendant stated that such was the value of this property that Messrs. Carnochan and Mitchell considered it sufficient to justify their endorsements to the extent of thirty thousand dollars. Strong as this language may be, the defendant solemnly declares it was not his intention to mislead or deceive the complainants. Such could not have been the design, whatever may have been the effect, because, if he had so intended, he would not but have known that a resort to the records of the court would have shown the true situation of his affairs. But this defendant merely intended to say that the property acquired by his father's will was under no specific lien or incumbrance, believing, as he then did, that the property purchased about that period would be sufficient to respond to the judgment which he had previously confessed to James Higginbottom and William Provost, and thus leaving his own unincumbered. This defendant here solemnly declares that it was his intention, from the beginning to the end of his dealings with the complainants, to act with good faith, and he hopes to be able to satisfy this court that he has been guilty of no act inconsistent with this declaration; and to the true understanding of what has been his course, and what are the claims of the complainants as well as those who rely on the judgment to James Higginbottom and William Provost, it is necessary to recur to a variety of facts. His testator, Doctor Elijah Gillett, died some time about the eighth of September, one thousand eight hundred and eighteen, leaving a very considerable estate. By his will, he appointed this defendant, with several others, executors and guardians of his children: none would assume the execution of these trusts but the defendant. There were ninety-eight slaves, besides other personal property. Defendant soon became satisfied it would most conduce to interests of all parties interested to sell the personal estate, which he did the twenty-second of March, one thousand eight hundred and nineteen. The terms of that sale required all purchases to pay over the one fourth of purchase money in cash, and for the balance, payable in twelve months, to give bonds and mortgage of the property, to secure the payment thereof. But at this sale he sold nothing, save and except his proportion of the goods and chattels, which he supposed to be his own. He had previously thereto, and as he thought legally, but which he is now informed is altogether informal, had partition, by which the one-sixth of the negroes had been allotted to him, and the other five-sixths were sold. By the will the defendant was allowed certain negroes by choice, upon relinquishing those deeded to him as named in the will, most of whom had been sold by the testator. He made no choice but the informal division which took place, by which sixteen negroes were allotted to the defendant. These were not sold, but, among those assumed by the defendant, were not

such as had been acquainted with his mills: therefore he purchased those who had been accustomed to that occupation, and with them their families. The firm of William S. Gillett & Co. were then in good credit, as well with the complainants as with others in Savannah. But this defendant, alive to the trust which had been reposed in him, conceiving that his brothers and sisters had a just claim to some security for his large purchase, and aware of the uncertainty of all mercantile pursuits, even when conducted with the utmost circumspection, and, most of all, knowing that neither the complainants or any other had given him individually, or the firm of William S. Gillett and Company, credit on the faith of this property which he had but just then purchased, or of that willed to him by his testator, for the loans he firmly believes to have been obtained previous to death of said testator. And believing too, as he will presently endeavor to show, he was justified in believing that the affairs of William S. Gillett and Company were in a prosperous condition, confessed a judgment to James Higginbottom and William Provost, in the trust for his minor brothers and sisters, of which the complainants complain. And that the intention and design of that confession was not only to secure the minors in the amount of the defendant's purchases, but as a security for them to the extent of their interests in his hands. And, although he had not then actually cash in hand to that extent, yet his purchases and available funds of which he had charge, he believed far exceeded it. James Higginbottom and William Provost were selected, because the other executors and testamentary guardians were then absent at the north, and it was thought immaterial whose names were used when the proceedings were accompanied by a declaration of the trust, and the sole object are indemnity or security. If the defendant has not been able to comply with his engagements to the complainants, it has not arisen from the want of inclination or exertion on his part. In less than a year after the sale of the testator's estate, the great fire of one thousand eight hundred and twenty occurred in Savannah. By that dreadful conflagration, which ruined many, the firm of William S. Gillett and Company lost, by the fire itself, seven thousand dollars, and by a succeeding sacrifice of goods partially damaged by removal the night of the fire, six thousand dollars more. In addition to this, defendant had been copartner of John Milne's of Beaufort, and in the spring of eighteen hundred and eighteen, dissolved that copartnership. When the balance against the latter was acknowledged by certain promissory notes, the amount of which, now due and unpaid, is upwards of sixteen thousand dollars, which he sees but little hope of ever realizing. He failed in 1825. After the disasters by the fire in Savannah, this defendant looked to the valuable mills bequeathed to him by his testator, and the property he had in possession, for the means of relieving him from his embarrassments. To these means, and to this object, his whole attention has been unceasingly directed. But these exertions have scarcely been more successful than others: one calamity followed another until the September gale of eighteen hundred and twenty-four, which nearly destroyed all hopes of relief. Yet, with all these obstacles, he has done more towards the completion of his engagement than complainants seem disposed to admit, having paid them, since the year eighteen hundred and twenty-one, three thousand three hundred and fifty-nine dollars. The complainants granting to his co-partner two or more years beyond the time given to the defendant (say four years,) during which period of indulgence beyond the time granted to this defendant, the complainants

caused to be levied upon the property of the defendant the execution of the judgment obtained against William S. Gillett and Company. This defendant having stated the foregoing facts, begs leave to remark, that, so far as his pecuniary interests are concerned, he can derive no advantage, whether the preference be given to the one or the other of those claiming under their respective judgments. He would, however, subject himself to want of confidence if he were to assert total indifference as to the result. His brothers and sisters have a claim founded upon every principle of justice and equity, and upon a trust this defendant has always held sacred, as is established by his early precaution in affording them an indemnity at a time when he owed no particular private debts; when he was in possession of private property sufficient, as he thought, to pay all, consisting of negroes (exclusive of his purchases at the sale,) and of Beldock mills, which had been valued by his father at or about twenty-five thousand dollars, and was considered by Messrs. Carnochan and Mitchel amply sufficient, long after, to justify their endorsements to the amount of thirty thousand dollars;) and, lastly, when the affairs of William S. Gillett and Company held out the prospect of great gain, and which he believes would have been realized but for the fire before alluded to; and he repeats that that judgment was confessed in good faith, without the most distant idea of defrauding the complainants or any other, and, if the failure of complainants to collect their judgment be a consequence growing out of that transaction, it will have been occasioned not by any fraudulent design, but by the occurrences of events which no one could have foreseen or prevented. The defendant would now beg leave to bring to the view of the court other circumstances which have transpired since those of which he has been speaking, and in which complainants themselves have been the principal actors. When defendant left Savannah, he executed a power of attorney to Charles M. King, his copartner, and one of the firm of William S. Gillett and Company, to transact his business there. Since the defendant has confessed a judgment to the complainants, and while he was using every exertion to perform the terms upon which that agreement was made, the complainants accepted, without knowledge or consent of the defendant, of notes drawn by said Charles M. King, as attorney for defendant, and endorsed by others and him, (the said Charles M. King being last endorser thereto,) as a substitute for those of William S. Gillett and Company, upon which the judgment in favor of complainants is founded; which notes have been renewed by said Charles M. King, and are now held by them, the original being in possession of the defendant. The defendant, therefore, submits to the judgment of this court whether the complainants have not, by this act, abandoned their judgment, and the lien which they now undertake to assert; and whether they shall not be compelled to rely on the new security which they received as a substitute for their original demand? And this defendant, in further answering, says that he has been informed and believes, sometime in December, eighteen hundred and twenty-six, or January following, the complainants adopted a resolution to discharge Charles M. King, one of the firm of William S. Gillett and Company, upon his paying five per cent. of the amount *then* due, provided this defendant's assent could be obtained. That application having been made to defendant for such assent, he incautiously, and without due reflection, gave an acquiescence in writing to such discharge. But a little reflection satisfied him of his imprudence in this particular, and, before his assent to the proposed discharge was received by the

bank, and, as he believes, was made known unto them, (to wit, for the space of ten days or thereabouts,) this defendant notified them that consent having been given voluntarily and without consideration, and finding it highly injurious to his interests, he declined the acquiescence, and protested against their receiving or acting under it with a view to the proposed discharge of his copartner. Yet they did receive and act under it, and, as he knows, have discharged his copartner Charles M. King, upon some security to pay them five per cent., whilst they are still pursuing this defendant, notwithstanding this defendant had paid *more than half* the principal of the original debt—his partner, Charles M. King, (save and except *the five per cent.*) having paid nothing. And defendant would submit how far a discharge of his copartner Charles M. King, under such circumstances, may enure to his benefit. And defendant further says, that all the debts of Doctor Elijah Gillett, his father, are not yet paid, and for which he insists provision shall be made before the complainants, or the judgment to James Higginbottom and William Provost, shall be paid. And this defendant denies all and every manner, and combining, and confederacies unjustly charged against him, and so forth.

South Carolina, *Barnwell District:*

William S. Gillett came before me and made oath that the facts set forth in this answer, so far as they depend on his own knowledge, are true, to the best of his knowledge and belief; and that, so far as they depend on information received from others, he believes them to be true.

WM. S. GILLETT.

Sworn to before me, this 12th November, 1827.

WM. PROVOST, *J. Q.*

Filed, April 5, 1828.

Will of Dr. E. Gillett.

Barnwell District, *South Carolina:*

In the name of God, amen. I, Elijah Gillett, of the district and State aforesaid, being sound in mind, but weak in body, do make and proclaim this as my last will and testament, to serve and avail as such, any imperfection in form or legal manner to the contrary notwithstanding. First, I leave to my executors hereinafter named the settlement of any debts I may owe at my decease, from that part of my property they may consider most for the general good of my heirs. Secondly, I will and require that all the improvements now going on at my place or plantation, called Richmond Hill, according to the agreement I made with Mr. John Kellogg, and until the completion of the same in the manner intended, and as is known to my friend and brother in-law William Scarborough, be paid for from the general amount of the property I die possessed of. Thirdly, to prevent unnecessary repetitions, all the property not directly bequeathed and devised away by this will, shall be equally distributed or divided among my beloved wife and children; the males under age receiving their proportions of the whole property now bequeathed and divised to them on their marriage or arrival at twenty one years of age, and the females on their marriage or arrival at twenty years of age, not precluding to either male or female the necessary

and requisite advances for education and maintenance in the meanwhile. And in case of death of any of said children before their marriage or arrival at age, their part or portion of said property now bequeathed shall be equally divided among the surviving of the present children and their mother. Fourthly, I give and bequeath to my beloved wife, Elizabeth Gillett, her life estate in the whole of the lands, plantation, buildings, called Richmond Hill, together with the right and use of timber for fuel, and for fencing off any of the most convenient adjoining that will furnish the same in default of any sufficiency on the tract or tracts of land called Richmond Hill. And at her death, I give and bequeath the said above mentioned property of Richmond Hill to my son Alexander Hamilton, as is more fully set forth in the item of this will attached to him. And I furthermore give and bequeath to my said wife, Elizabeth, the use, during her life time, of all the cattle, horses, mules, and other necessaries of whatsoever kind, (viz.) of plantation tools, carriages, carts, &c., as are requisite for carrying on the said plantation affairs, giving the liberty and right of disposing of what part of the same she may deem fit, provided she replace the same upon an equal footing to that on which she receives it at the time of my death. And I further give and bequeath to my said wife, during her life time, from the negroes I die possessed of, the requisite domestic attendants for a support and comfort, (viz.) a cook, and attendant on the cows and dairy, a gardener, a carriage driver, and not less than two or three other servants to attend upon the house and children, to be made choice of by herself as soon as conveniently after my death. And in addition to, and exclusively of these domestics or house negroes, I will and devise that she have the use of the whole of my other negroes, with the exception of those divised and bequeathed to my son William, at the rate of hire to be paid by the remainder of my executors, or either of them, or, in case of their death, absence, inability, or disinclination to act, the said negroes shall be put up to hire in the course of the month of January in each year; provided, nevertheless, that my said wife Elizabeth draw her equal proportion, with my children, for the amount of the hire of said negroes. My object in arranging matters in this way being that the whole and entire gain of my negroes (with the exception before made) may be kept together until the period I hereinafter allot for the division thereof—I mean the marriage or arrival of age of my children; and provided, also, that nothing herein contained shall prevent my said wife Elizabeth from devising and bequeathing away that portion of negroes which would fall absolutely to her in the distribution thereof. Fifthly, to my son William S. Gillett, I give and bequeath the whole of the Beldock mill establishment, houses, materials as standing at the time of my death, together with the whole of the lands appertaining thereto, including the grant of land to my father by the State of South Carolina, and all the subsequent purchases which have been made to since the mill tract within the circumference of said grant. Also his proportion of, or the amount or the value of the negroes I die possessed of, giving him the preference of such negroes as have been in the habit of attending the mill, provided, nevertheless, the division of such negroes be not made until six months after my death, unless earlier determined by the remainder of my executors; and that, furthermore, in order to be entitled to such division of negroes, he shall first of all relinquish in behalf of my estate all his right and title to the following negroes, which are deeded to him by deed of gift, viz. Dick, Venture, Chatham, and Mary; and further-

more, that, to obtain the Beldock establishment, he or his heirs or assigns first relinquish and convey over and in behalf of my estate the tract of land on the lower Three Runs, not far from Mr. Lawrence Hext, which was given to him by his deceased grandfather, William Scarborough. Sixthly, to my daughter Julia Gillett I give and bequeath the tract of land I hold near Duck Savannah, together with one or more other tracts of land, which, in the opinion of my executors, may, in some measure, equalize her with my other children in case I should not, as is my intention, designate the said tract or tracts of land as a codicil to be annexed to this my will; likewise her proportion of my negroes and other property not divided away as is set forth in item third of this my will. Seventhly, to my son Alexander Hamilton Gillett, after the decease of his mother, I give and bequeath the plantation, and building, and land, called Richmond Hill, as held by her, together with the other appurtenances as set forth, provided he or his guardians account with his brothers and sisters, then surviving, for their proportion of the amount, to be ascertained either by public sale or private agreement of the stock of cattle, horses, mules, hogs, &c., then in use on said plantation, or have an equal distribution thereof, made as may be most agreeable; likewise his proportion of my negroes and other property not divised away as is set forth in item third of this my will. Eighthly, to my daughter Lucy I give and bequeath of my other lands, according to the opinion of my executors, or a majority of them, such part or portion thereof as will equalize or place her on a footing with my daughter Julia, in case I should not be able to designate in a codicil to this will that particular portion of my lands I should wish her to have. Likewise, give and bequeath to her a proportion of my negroes and other property not devised away as is set forth in the third item of this my will. Ninthly, to my daughter Lavinia I give and bequeath the land and buildings I have at the mill called Dykes', together with any other lands I may have, which, in the opinion of my executors, or a majority of them, will equalize or place her on a footing with her other sisters, in case I should not be able to designate in a codicil to this will, that particular portion of land I wish to fall to her share; likewise, give and bequeath to her a proportion of my negroes and other property, not devised away as is set forth in the third item of this my will. Tenthly, to my son Aaron Gillett I give and bequeath the tract of land on the lower Three Runs intended to be relinquished by his brother William, together with my other lands I may have, which, in the opinion of my executors, or a majority of them, will equalize or place him upon a footing with his sisters, in case I should not be able to designate in a codicil to this will that particular portion of land I wish to fall to his share. I likewise give and bequeath to him a proportion of my negroes and other property not divised away as is set forth in item third of this my will. Eleventhly, in the event of the death of my wife Elizabeth before the distribution intended to be made by this will, I give unto my then surviving executors the right and power of managing the negro and other personal property in the manner most beneficial to my heirs, and the right and power in case of, and to sell or dispose of such part of my real estate as is now devised away, as may be beneficial to my said heirs, or expedient for them. I further nominate my said ex'ors to this will as guardians for my children, and, in case of their decease, absence, or disinclination to serve, I pray the court of chancery to appoint two suitable persons, taking the adequate security. Twelfthly, I hereby nominate and appoint my wife Elizabeth Gillett, my son William S. Gillett, Robert Isaac of Savannah, and

William Scarbrough my executors to this my last will and testament. In testimony of all of which, I have hereunto set my hand and seal, this ninth day of January, in the year of our Lord eighteen hundred and seventeen. Signed, sealed, and delivered, in presence of us and each of us.

SAML. D. ROBESON.
JOHN BASSETT.
JOHN KELLOGG.
E. GILLETT. [L. S.]

Codicil. I give to my executors the right of selling any of the negroes I die possessed of, provided the same be replaced either in number or value. Signed and sealed, in presence of [L. S.]

On this ninth day of January, 1817, I now annex this codicil to serve as part of my last will and testament, and explanatory of my desired distribution of my landed property. First: the Beldock tract of land, so called, devised to my son William S. Gillett by article fifth of my will and testament, comprehends the grant to my deceased father of six thousand acres, the grant to George Kersh of the land whereon the mill stands of one hundred acres; the tract called Bentley's old field of one hundred and fifty acres; and of two tracts granted to Jacob Swecord, on Boggy gut, of one hundred acres each. Secondly: the Richmond Hill tract, so called and devised in articles fourth and seventh of my last will and testament, comprehends the tract of six hundred and forty acres on Davis's branch, and granted to Thomas Carson; the tract, the Bellhaven mill tract, granted to John Wickley on Murdock's branch, adjoining lands of Michael and Dixon Calhoun, and Aaron Smith, of fourteen hundred and eighty acres; the tract formerly Joseph Jackson, adjoining lands of Dixon and Michael Calhoun, and estate of Thomas Gough, of two hundred and fifty-six acres. The tract adjoining the foregoing, granted Lashly Creighton, wife of Thos. Gough, containing five hundred and seventy-five acres; the tract granted to Michael Swecord on Murdock's branch, and adjoining the foregoing tract, 1438 acres, containing twenty-eight acres; the tract sold by Colonel Gideon Hagood, adjoining Daniel Williams and Lashly Gough's land of one hundred and twenty five acres; and, lastly, the tract of land bought of Samuel Calhoun, junr., adjoining lands of Michael Calhoun, &c., and containing one hundred and ninety-seven acres. Thirdly: the lands devised by article tenth of my last will and testament to my son Aaron Gillett on the tract to be conveyed by Gillett, granted to Paul Johnson, laying on or near the lower Three Runs, containing ninety-six acres; a tract of land granted to Thomas Thompson the 2d April, 1773, adjoining the foregoing, containing one hundred acres; a tract granted to Saml. Way adjoining the foregoing, containing fifty acres; a tract bought of Alexander Inhan, adjoining the foregoing, containing five hundred acres; a tract bought from Daniel and Isaac Bourdeaux, and (*on*) Turkey branch, near or adjoining the foregoing, of one hundred and eighty-five acres; a tract near or adjoining the foregoing, bought of Isaac Bourdeaux, containing six hundred and thirteen acres; tract granted to William Sanders, and by him sold to Samson Hough, near or adjoining some of the foregoing tracts, containing one hundred acres; a tract laid out to Thomas Lovelace, on Toby's creek, waters of big Saltcatchers, containing one hundred and fifty acres; a tract granted to Clevers Wyld, on Turkey creek, waters of big Saltcatchers, containing six hundred and forty-two acres; a

tract granted to the same, and adjoining the same, containing seven hundred acres; a tract granted to William Nibbs on both sides of the lower Three Runs, and containing five hundred and forty acres; a tract adjoining the same, granted to Henry Moffette, containing three hundred and eighty-five acres; and, lastly, a tract adjoining the same, surveyed for Buford, but granted to C. D. Wyld, containing one hundred and two acres. Fourthly: the lands devised to my daughter Julia, in the sixth article of my last will and testament, are the half of the Duck Savannah tract divided with old John Fitts; a tract bought from Arthur Fennel and Joseph Jackson, adjoining the foregoing tract, containing two hundred and twenty two acres; a tract adjoining the foregoing, formerly Joseph Jackson, containing fifty four acres; a tract bought of Saml. Calhoun, joining the foregoing, containing one hundred and fifty acres; a tract bought from John McFail, adjoining Beldock mill tract, containing nine hundred and twenty acres; also, all the land run in the name of Bassett, joining to, and near the Duck Savannah lands, (continued on next sheet of paper, continued from the eighth page, fourthly continued;) also, to my said daughter Julia, in order to equalize, as far as in my power at this time, I hereby direct that a division be made according to value, and not quantity, between her, the said Julia, and her sister Lucy, and Lavinia, of the following lands, (superseding by this article the necessity of repeating the same under the allotment or explanation made in behalf of the said Lucy and Lavinia,) all the lands I hold down about Levy's, or Levy Long's bay, (viz.) a tract granted to Aaron Gillett of five hundred acres; and two other tracts granted to Elijah Gillett, adjoining each other, and the aforesaid tract, the one containing six hundred and forty, and the other four hundred and fifty acres; also, the tract granted to James Donald, or Daniels, laying on Jackson's branch, containing, by original survey, fourteen hundred and five acres; and, also, all that part of grants of land to John Wickley, dated the fourth day of September, 1786, which are saved or have not been already sold by me. Fifthly: the lands devised by article eighth to my daughter Lucy, are a tract of land granted to John Taylor, lying on the head waters of Murdock's branch, containing six hundred and forty acres; also another tract granted to the aforesaid, adjoining the aforesaid, and the Belldock mill tract, containing six hundred and forty acres; likewise, the tract granted to Robert McElmath, adjoining the aforesaid tract granted to John Taylor, and the Belldock mill tract, together with her proportion or thirds of the value or lands set forth in the fourth foregoing article. Sixthly: the lands devised to my daughter Lavinia, by article ninth of my last will and testament, are the tract granted to Thomas Bassett, on Ruben's branch, waters of Boggy gut, containing seven hundred and forty three acres; also, an adjoining tract, granted to the same for one hundred and fifty acres, the tract of land, and so forth, called Dyck's mill, containing, by estimation and re-survey, one hundred and fifty acres; also, the tract of land granted to Mary Smith Wyld, running across Boggy gut, and adjoining lands of Wm. Dyke's estate; the Belldock tract, containing four hundred and ninety acres; also, the tract bought from Arthur, lying on Boggy gut, adjoining, not for the proceeding, but adjoining lands of Wm. Duyke's estate, containing one hundred acres, together with her proportion or third of the value, or lands set forth in fourth foregoing article. Seventhly: all, or whatever lands not detailed or set forth here, shall be equally divided between my widow and the foregoing six children. Eighthly: I enjoin upon my executors (the ex-

pense to be defrayed from my general estate) to employ John Allen, or some other skilful deputy surveyor, to complete a plan or map of the foregoing division, so that the same may serve as a guide while fresh in the memory of the friends or executors I leave, to prevent future disputes, litigations. This will and codicil thus far made, on three distinct sheets of paper, given under my hand and seal, the day and date herein mentioned. Signed and sealed in presence of Saml. D. Robeson, John Bassett, John Kellogg.

E. GILLETT.

N. B. In consequence of unavoidable and unforeseen causes, this my last will and testament was not signed at the time the erasures express, but is interlined with this, ninth day of January, 1817, at which time I affixed my seal and signature. In presence of Saml. D. Robeson, John Bassett, John Kellogg.

E. GILLETT.

SOUTH CAROLINA, *Barnwell District.—Ordinary's Office, Sept.* 14, 1827.

The foregoing is a true copy of Dr. Elijah Gillett's will, taken from book B, page 52, and examined.

ORASMUS D. ALLEN, *O. B. D.*

Letters from Wm. D. Martin and W. S. Gillett, see page 79.

Commission to Examine Witnesses.

THE UNITED STATES OF AMERICA, *South Carolina District.—To John D. Edwards and Wm. D. Martin, or either of them, greeting:*

Whereas, a certain cause is now depending in the circuit court of equity of the United States of America, for the sixth circuit, South Carolina district, between the Bank of Georgia, complainants, and William S. Gillett and others, defendants; and it being necessary to the investigation of the said cause, that certain persons resident in Barnwell should be examined on certain interrogatories: Now, know ye, that, in confidence of your p u-dence, ability, and integrity, you are, by these presents, appointed, and full power and authority are given, hereby, to you, any two or more of you, diligently to examine all witnesses whatsoever, upon certain interrogatories to be exhibited to you as well on the part of the complainants as on the part of the defendants, or either of them; and therefore you, any two or more of you, are hereby authorized and required, on certain days, and at certain places, or to be appointed by you for that purpose, to cause the said witnesses to come before you, and then and there to examine each of them apart on the said interrogatories, on their respective corporal oaths first taken before you, or any two or more of you, and to take such their examinations, and reduce them to writing on paper; and when you shall have so taken them, to send the same to the judge of the said court, closed up, and under your seals distinctly and plainly set, together with the said interrogatories, and this writ; and you, and every of you, are hereby further required, that before you act in, or be present at the swearing or examining of any witness or witnesses, you do severally take the oath first specified in the schedule hereunto annexed; and you, any two or one of you, are hereby authorized and empowered, jointly or severally, to administer such oath to the rest or any other of you. And you are here-

by further authorized and required, jointly and separately, to administer the oath last specified in the said schedule hereunto annexed, to all and every of the clerks or clerk employed in taking, transcribing, or engrossing, the deposition or depositions of witnesses so examined by virtue of these presents, before they or he shall be permitted to act as clerks or clerk, or be present at such examination. Witness, the honorable John Marshall, Chief Justice of the United States, this twelfth day of May, in the year of our Lord one thousand eight hundred and twenty-eight, and in the fifty-second year of the sovereignty and independence of the United States of America.

JAMES JERVEY, *Dis't. Clerk.* [L. S.]

Commissioner's Oath.

You shall, according to the best of your knowledge, truly, faithfully, and without any partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now produced and left with you. And you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed, and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners in the commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the said court: so help you God!

WM. D. MARTIN.

Sworn to before me, September 27, 1828.

A. PATTERSON, *Q. U.*

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross, the depositions of all and every witness and witnesses produced before and examined by the commissioners, or any of them, named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or any of them, to take and write down, and engross the said depositions or any of them. And you shall not publish, disclose, or make known to any person or persons whatsoever, the contents of all or any of the depositions of the witnesses, or any of them, to be taken or written down, transcribed or engrossed, by you, or whereto you shall have recourse, or be any ways privy, until publication shall pass by rule or order of the said court: so help you God!

Instructions for the Commissioners.

The commissioners must first attend to the instructions contained in the commission; after which, when they are proceeding to business, they will put the first interrogatory to the first witness produced, and set down his answer thereto on the sheet entitled "Deposition of witnesses sworn and examined," &c. &c. When done with this, they will put the second interrogatory, and set down his answer to that also, and so on, till they have finish-

ed putting the interrogatories to him. They will then proceed to examine such other witnesses as may be produced, in which case they will entitle their depositions in the same manner as those of the first, with the difference of the parties' name, age, &c. &c. They will then fix and seal the several sheets together, and set their hands and seals at the bottom of the whole, and their hands to each sheet, leaving the covering sheet on the outside of the whole. Then enclose the whole commission and all in a large paper, well sealed up with their seals, with their names affixed thereto; and having first endorsed the packet on a corner thereof, with the names of the parties, in the same manner as is done on the covering sheet of the depositions, direct the same to James Jervey, district clerk for South Carolina district.

N. B. Should the sheets annexed not be sufficient, the commissioners can easily tack others thereto, putting the covering sheet over the whole. And of the commissioners will be sufficient to take the examination.

I certify that the execution of this commission appears by the schedule hereto annexed, containing the answers of the witness, A. Patterson, in his own handwriting, and that no clerk was employed. That the said commission was executed by me, solely, for the reason that the same was directed to another and myself, or to "either of us" Given under my hand and seal, at Barnwell court-house, the 27th September, 1828.

WM. D. MARTIN. [L. S.]

Examination of Witnesses.

William S. Gillett, and James Higginbottom, and others, ads. the Bank of Georgia, in equity, circuit court United States. Interrogatories for Angus Patterson, esq., a witness to be examined in behalf of the defendants, and answers.

1. Did William S. Gillett, as the executor of his father's estate and the guardian under the will of his brothers and sisters, apply to you, in the spring or summer of 1819, to secure to his brothers and sisters their interest in their father's estate which had been recently sold by him as executor; and did he propose to give a mortgage in trust for that purpose; and why was not such an instrument prepared and executed?

Answer. To the first interrogatory, the witness answers: I was applied to by William S. Gillett in May, 1819, more, I think, with the view of consulting me on the propriety and practicability of his taking some steps to secure to his brothers and sisters their interest in their father's estate, than as to the means by which that object was to be effected; and the conversation resulted in his requesting me to prepare a mortgage for the purpose. The personal estate had been sold by William S. Gillett, and he was the only acting executor of his father's will, and testamentary guardian of the testator's younger children. I cannot, after the lapse of so much time, say positively for what reason a confession of judgment was substituted in lieu of a mortgage, but I think it was for the want of a description of the property proposed to be mortgaged; and I recollect distinctly that the substitution was made on my suggestion. I do not think that Mr. Gillett had thought of a judgment before it was suggested by me.

2 Was the judgment of the 1st of June, 1819, confessed by William S. Gillett to Higginbottom and Provost, prepared by you as a security for the

shares of the said brothers and sisters of William S. Gillett of their father's estate, the proceeds of which were then in the hands of the said William as executor?

Answer. To the second interrogatory, the witness answers: The judgment confessed by William S. Gillett to Higginbottom and Provost was prepared by me as a security for the parts or portions of the younger children of Doctor Elijah Gillett, deceased, of the estate of their father, and I think that, at the time I wrote, or sketched off a draft of a declaration of the trust upon which the judgment was given, to be signed by Higginbottom and Provost, neither of whom were present, I do not recollect to have seen this paper after it was executed, although I may have seen it. Indeed I always believed that I had seen it till I came to tax my recollection for the purpose of answering this interrogatory. My impression has always been that such a paper was executed, and I have now no doubt but that it was. I recollect perfectly that Gillett expressed a determination not to confess the judgment, unless a declaration of its object was signed by the nominal plaintiffs.

3. Was the said judgment intended to secure to them their whole interest in the estate, by covering a sufficient amount of the said William S. Gillett's estate, so as to reduce not only the proceeds of the estate in his hands in which they were interested, but, also, what he might owe for property purchased of the estate by him?

Answer. To the third interrogatory, the witness says: At the time the judgment was confessed, I understood, that, up to the sale of the personal property, Gillett was in advance to the estate; that, by the sale he had become considerably indebted to his brothers and sisters, but that all the demands against the estate had not been paid off, in consequence of which the precise amount of what he did owe could not be ascertained. The amount of the judgment was fixed by Wm. S. Gillett and myself upon his statement, and I understood it to be a security for the balance that might be due from him to his brothers and sisters on a final settlement of the estate. This was certainly the professed, and, as far as I know or believe, the real object of the judgment.

4. Did you suggest to him that the security designed could be perfected as well in the form of a judgment as in that of a mortgage?

Answer. To the fourth interrogatory, the witness says: I advised Wm. S. Gillett to give the judgment, under the belief that his brothers and sisters would be as effectually secured by it as by a mortgage.

5. Did you not ascertain that their share of the estate, or their claims upon it, amounted to at least thirty thousand dollars, the sum for which the judgment was confessed?

Answer. To the fifth interrogatory, the witness answers: All the knowledge I had, at the time the judgment was confessed, of the accounts between Wm. S. Gillett and the estate of his father, was derived from him. I did not examine the accounts, because I was informed that they were not, and could not, then be closed. I did not think the amount of the judgment more than sufficient to answer the object intended. The intention of the judgment was so well understood, that I did not consider a small amount over or under, of any importance, as it could only be enforced for the sum really due. I have no doubt, however, that the amount was intended to be rather over than under the debt due.

6. Were the plaintiffs in the suit selected as trustees on account of the absence from the State of the other executors and testamentary guardians?

Answer. To the sixth interrogatory, witness answers: I have now no distinct recollection of the reason why Higginbottom and Provost were named as plaintiffs in the judgment; but I think the principal reason was their residing in the neighborhood. I think Wm. Scarborough, who is named an executor in Dr. Gillett's will, was mentioned, and that the reason why he was not made a plaintiff or trustee, was, because he did not reside in the State. Some time after the judgment was confessed, Mr. Higginbottom, expecting to remove to England, desired to be discharged from the trust, and the judgment was assigned by him and Provost to the other executors. I recollect that something was said as to the propriety of making the executors, who had not qualified the trustees, but whether it was at the time the judgment was confessed, or when the assignment was made, I do not recollect, but I think it was on the latter occasion. I do not believe that when Gillett first mentioned to me the subject of securing his brothers and sisters, he was aware that a trustee was necessary; and I recollect that my own impression was, that it was not a matter of much consequence who the trustees were.

7. Was William S. Gillett, at the date of the said confession, in good credit and solvent, and was the said judgment given bona fide, and from the honest motive of securing his brothers and sisters from the mishaps to which persons in trade are more or less exposed?

JOHN GADSDEN, *def'ts. soli.*

Answer. To the seventh interrogatory, the witness answers: At the time the judgment was confessed, my personal acquaintance with Wm. S. Gillett was recent and limited. His credit in this district, as far as I know, was good. He had, previous to his father's death, resided in Savannah, and I cannot say what was his standing in that place. As far as I know, the judgment was given bona fide for the purpose of securing to the children of the late Dr. Gillett their parts of their father's estate. I must, however, add, that I have no doubt but that it was intended to give his brothers and sisters the preference in the event of a contest between them and other creditors; for unless it was to have that effect, I do not see that it could be of much service to them.

A. PATTERSON.

Sworn to before me, Sept. 27, 1828.

WM. D. MARTIN, *Comm.*

Cross-interrogatories for Angus Patterson, esquire, a witness produced and examined by the defendants, and answers thereto.

1. State how and in what manner William S. Gillett did apply to you concerning the judgment mentioned in the first interrogatory? Did he apply to you as his counsel, or as the counsel of Provost and Higginbottom, or of any other persons? Had you any authority from Provost and Higginbottom to act as their attorney? and if so, state what it was. If you say that the judgment was confessed to Provost and Higginbottom as trustees, then say whether there was, at the time, any declaration of the trust to which said judgment was subject; and what measures were taken to show the real objects and purposes for which said judgment was confessed.

Answer. To the first cross interrogatory, the witness answers: When Wm. S. Gillett first mentioned to me the subject of giving some security to the younger children of the late Dr Gillett, he observed, according to the best of my recollection, that it had been suggested by some friend or connexion of the family that he ought to secure his brothers and sisters He appeared to think, himself, that such was his duty, and inquired whether it was proper for him to do so. I had no authority from Higginbottom and Provost, nor do I believe they took any part in the transaction, except giving their consent, and an acknowledgment of the purpose for which the judgment was confessed. I do not recollect to have had any communication with either of them on the subject until after the marriage of Mr. Higginbottom, and he thereby became interested in the estate of Dr. Gillett, which was long subsequent to the judgment. I considered myself as acting for the children of Dr. Gillett. I, however, acted only at the instance of Wm. S. Gillett. Since the judgment was assigned, I have been authorized by William Scarborough to see that its object should not be defeated. When the confession of judgment was proposed, Gillett expressed apprehensions that it might, at some future period, be used to his injury, and contrary to his intention; and, to obviate that difficulty, it was concluded that a declaration of the trusts upon which it was given should be signed by Higginbottom and Provost. As to that paper, I can add nothing to what is contained in my answer to the second direct interrogatory, except that I feel certain that it was executed, and that the trusts were the same or similar to those expressed in the assignment.

2. Did William S. Gillett, at that time, owe any thing to Provost and Higginbottom or to his father's legatees? If you answer in the affirmative, say how much he did owe; how was the sum ascertained; and annex a copy of the original statement of the debts by items.

Answer. To the second cross-interrogatory, the witness says: The judgment had no relation to a debt due from Gillett to Higginbottom and Provost. No statement of what Gillett owed the estate of his father was made out at the time the judgment was confessed; nor was the precise amount ascertained. Gillett, I think, had a bundle of papers with him relating to his administration of the estate, but I do not recollect of going into any investigation of the accounts, except perhaps looking over the account of the sale of the personal estate, and I recollect well that Mr. Gillett said the balance against him could not be made out, as there were debts to pay. It was intended that the judgment should not be for less than the amount really due, and it was distinctly understood that it should be enforced if ever such proceeding became necessary, only for the amount that might be found due on a final settlement of the affairs of the estate.

3. Was it the intention of William S. Gillett at the time referred to, by confessing a judgment to Provost and Higginbottom, to encumber the whole of his property; and, if so, for what amount?

Answer. To the third cross-interrogatory, the witness answers: I do not recollect that any thing was said at the time the judgment was confessed as to the extent of the lien intended to be created. I, however, do not suppose that Gillett intended to incumber his property beyond what was or might be necessary to effect the object in view. The giving a judgment in place of

a mortgage was entirely accidental, but I think the difference of the liens must have been understood by Mr. Gillett.

4. What were the terms of sale under which William S. Gillett sold his father's estate? Did the terms of sale require that the purchaser should give a confession of judgment?

Answer. To the fourth cross-interrogatory, the witness says: I cannot say of my own knowledge what were the terms under which Wm. S. Gillett sold his father's estate, but I have referred to a number of mortgages on record in the Register's office, which I am certain were given by purchasers at the sale, by which the terms appear to have been a bond, with personal security and a mortgage of the property. I do not believe that, by the terms of sale, purchasers were required to give a confession of judgment.

5. Do you know that William S. Gillett had, in June, 1819, committed an act of devastavit as executor of Elijah Gillett? if you answer in the affirmative, say in what such devastavit consisted, and what was the amount of it.

Answer. To the fifth cross-interrogatory, the witness says: I do not believe that Wm. S. Gillett would, intentionally, abuse the trust confided to him by his father's will. He, however, in March, 1819, in the character of executor, sold the whole of his father's personal estate without the sanction of the ordinary or any other court, and without any sufficient cause as far as I know, though such cause may have existed, at which sale he was himself the principal purchaser. Whether this act would or ought to be deemed a devastavit or not, I do not undertake to say: it however formed the principal consideration which induced me to advise the judgment in question.

6. Do you not know that Wm. S. Gillett, at the date of the said judgment, was largely indebted in Savannah on account of his mercantile contracts?

Answer. To the sixth cross-interrogatory, the witness answers: I know nothing of Wm. S. Gillett's debts in Savannah. I think at or about the time he confessed the judgment in question, he said, in substance, that he was or had been concerned in a mercantile house in Savannah, the affairs of which he did not seem to consider as very prosperous, although I did not understand him as representing it to be bankrupt, or likely to become so; but, on the contrary, he then, and long afterwards, appeared sanguine and confident that his affairs in Savannah would be wound up satisfactorily. He observed that the times were critical; that he might become involved, and that, being in possession of the funds of his brothers and sisters, he thought it just to secure them against contingencies.

7. Have the goodness to refer to the record, Provost and Higginbottom vs. Gillett, and see if the judgment is not confessed on a plain note of the following tenor:

$30,000. BARNWELL, *June* 1, 1819.

On demand, I promise to pay to the order of Messrs. James Higginbottom and William Provost thirty thousand dollars, for value received.

(Signed) W. S. GILLETT.

And say whether the above note was signed by William S. Gillett for so much money actually due or not?

Answer. To the seventh cross-interrogatory, the witness answers: I have referred to the record, and the note upon which the judgment in question was confessed is truly copied into this interrogatory. I believe the note was drawn for the sole purpose of being the foundation of the judgment, and that no part of the money at the time was due to Higginbottom and Provost, or either of them.

8. Whose instructions did you follow, as attorney, on record in regard to the judgment referred to? Is it not a fact that the said judgment was under the control of William S. Gillett himself?

Answer. To the eighth cross-interrogatory, the witness answers: I have stated already, according to the best of my recollection, the circumstances under which the judgment was made up. I have no doubt but Gillett had great confidence in Higginbottom and Provost, and that that was a principal cause of their being selected trustees. I dare say it was understood, though it does not come within my knowledge, that the judgment was not to be enforced but upon the most extreme necessity. I was never present when the judgment was a subject of conversation between the parties. As to myself, I certainly never considered myself at liberty to enter satisfaction on the judgment at the instance of Wm. S. Gillett, or even at the instance of the nominal plaintiffs, unless I were satisfied that the objects for which it was given were accomplished.

9. Was not the judgment referred to kept secret? Did not Mr. Gillett give you to understand, directly or indirectly, that he did not wish it to be known, unless some accident should happen to him, or something to that effect?

Answer. To the ninth cross-interrogatory, the witness answers: I think Gillett expressed fears that the judgment might injure his credit, and very probably a desire that it might be kept secret, but that was out of the question, as the public offices were accessible to every one. I do not recollect of mentioning the judgment, or of even thinking of, it except perhaps once prior to the time Mr. Gillett became embarrassed. Some person in the clerk's or sheriff's office expressed, in my presence, astonishment at the large amount of the judgment. I then explained the circumstances and terms under which it was confessed. My silence arose entirely from having had no occasion to mention the transaction.

10. Do you know any thing else that may tend to show that the judgment referred to was confessed to hinder or delay the creditors of William S. Gillett, or that it was confessed for a debt not due, or for more than was due at the time?

Answer. To the tenth cross-interrogatory, the witness says: The judgment was entered up to bind Gillett's property for the amount he owed, or might on a final settlement be found to owe, his brothers and sisters. I believe it to have been intended to give his brothers and sisters a lien on his estate prior to such as might be acquired by other creditors in the event of his insolvency; for, unless it was to have that effect, I cannot see what security it would be to those it was intended to benefit. As the judgment was intended to postpone other creditors to his brothers and sisters, it may certainly be said to have been intended to hinder or delay other creditors. I

believe that Mr. Gillett was, at the time, and that he still is, indebted to his brothers and sisters, and that he conscientiously believed not only that it was proper, but that it was his duty to prefer them to his other creditors in case of his insolvency, but whether he considered his bankruptcy certain, probable, or merely possible, I am unable to say. He spoke confidently of the ability of the firm in Savannah to pay its debts.

A. PATTERSON.

Sworn to before me, September 27, 1828.

WM. D. MARTIN, *Comm'r.*

Decree.

THURSDAY, *the 25th June*, 1829.

The circuit court met according to adjournment. Present, his honor William Johnson, his honor Thomas Lee.

BANK OF GEORGIA,
vs.
WILLIAM GILLETT and others. } *Equity.*

Decree.

In this case the court are of opinion that the declaration of trust contained in the assignment of the judgment under which the minor children claim precedence, is a sufficient declaration in writing; and that a regard to the interests of the minors will sanction the court in sustaining the judgment for any amount that shall be shown to be justly due to them. The court ordered that it be referred to the clerk to ascertain and report the general statement of accounts between the executor and the estate of Elijah Gillett; also, between the executor and the individual legatees; also, what effects of the estate are yet to be collected, or remain to be distributed; also, whether any, and which of the negroes sold by the marshal, were of those who were sold and bought in by the executor; also, a detailed account of the sale of the estate made by him, setting forth the purchasers' names, the amounts of the respective purchases, and the times when their several payments were made.

Bill of Revivor.

THE UNITED STATES OF AMERICA, *Sixth Circuit, South Carolina District, in Chancery:—To the honorable William Johnson, one of the Justices of the United States, and the honorable Thomas Lee, District Judge.*

Humbly complaining, your orators the Bank of the State of Georgia, citizens of the said State, show to your honors, that heretofore, and about the fourth day of April, in the year of our Lord one thousand eight hundred and twenty-seven, your orators filed their original bill in this honorable court against William S. Gillett, executor and legatee and devisee of Elijah Gillett,

deceased, and William Provost, James Higginbottom, and Julia his wife, George W. Collins, and Lucy his wife, Alexander Hamilton Gillett, Lucy Gillett, Lavinia Gillett, and Aaron Gillett, devisees of said Elijah Gillett, citizens of the State of South Carolina, and therein prayed to be relieved concerning the matters contained in the said bill; and, more particularly, that a certain judgment confessed by the said Wm. S. Gillett, to his co-defendants, William Provost and James Higginbottom, might be set aside; and that an account might be taken of the estate of Elijah Gillett, and that your orators might be paid and satisfied out of certain moneys levied by the marshal of this district, the amount of the debt due and owing to them by the said Wm. S. Gillett. To which bill, the defendants put in their answer, and the cause was set down for hearing, and came on to be heard in this honorable court, at the sitting of the said court in April last, at which time your honors thought fit to decree that an account should be taken of the estate and effects of Elijah Gillett that came to the hands of Wm. S. Gillett as his executor; and of the amount due and owing by the said Wm. S. Gillett to the estate of his testator; but, before the said account was taken, the said Wm. S. Gillett departed this life, whereby your orators' said suit became and was abated. Your orators further show to your honors, that administration of the estate of Elijah Gillett not administered by Wm. S. Gillett, has been in due form of law granted to James Higginbottom, one of the defendants above named; and that administration of the estate and effects of Wm. S. Gillett has been committed to the same James Higginbottom. To the end, therefore, that the proceedings in your orators' said bill may be revived and stand in the same plight against the said James Higginbottom as they were in at the decease of the said Wm. S. Gillett, as to the parties to the said suit, and that the defendants may answer this, your orators' bill of revivor; and that your orators may have such other and further relief as the nature of this case may require; may it please your honors to grant unto your orators a writ or writs of subpœna ad revivendum to be directed to the said James Higginbottom, and Julia his wife, George W. Collins, and Lucy his wife, William Provost, Alexander Hamilton Gillett, Lucy Gillett, Lavinia Gillett, and Aaron Gillett, (and the rest of the confederates when discovered,) thereby commanding them, and every of them, at a certain day, and under a certain penalty, personally to be and appear before your honors in this honorable court, then and there to answer all and singular the premises and charges of the said original bill, and to stand to and abide by such order, direction, and decree therein, as to your honors shall seem meet, and shall be agreeable to equity and good conscience. And your orators will ever pray, &c.

PETTIGRU & CRUGER.

Filed, December 2, 1829.

Clerk's Report and Account.

THE UNITED STATES OF AMERICA, *South Carolina District:*

BANK OF GEORGIA, *vs.* WM. S. GILLETT and others. } *In Equity.*

Report of Clerk, acting as master, April term, 1831.

The clerk respectfully reports, that, after a careful and accurate examination of the papers furnished, he has, agreeably to the directions of the court,

presented a general statement of accounts between the executor, Wm. S. Gillett, and the estate of Dr. Elijah Gillett, who died in September, 1818. From the inventory, dated Dec. 7, 1818, it appears that there *were in possession of the executor* 98 *negroes*, and, from the tax returns for 1818, that he returned 97 negroes of the estate of Dr. E. G. At the sale 22d March, 1819, *only* 83 *negroes were sold*, making a difference of 15. It further appears that one negro, named Lymas, was sold by the executor, Nov. 1820, for the sum of $500, with which the clerk has charged him in the general account. Two other negroes, Catharine and Polly, alleged to be the property of the estate Dr. G., were sold by W. S. Gillett to Jos. Righton, 1st March, 1818, and by him conveyed to Dr. John M. Righton in trust for Mary M. Gillett, wife of W. S. G., 15th May, 1831. There would then remain of the 98 negroes inventoried, 12 unaccounted for, with which the executor should be charged. The clerk has concluded that he could adopt no rule more fair and just than the average at which the negroes sold, viz. $491, and with this amount he has accordingly charged the executor. The result of the account thus made up, (after giving to W. S. Gillett every credit to which he appears to be entitled,) is, that W. S. G. was, on the 1st day of January, 1829, liable, as executor, for a balance of principal equal to $40,827 63, which, with interest thereon, calculated to the 11th day of July, 1831, (the day to which this court stands adjourned) amounts on the last mentioned day to the sum of $60,958 64.

2. The parties interested did not consider it necessary for the purposes of this suit to make up an account between the executor and each of the individual legatees. They conceive that they can arrange such matters among themselves, without, in the least, affecting the interests of others. As this was acquiesced in by the counsel representing the creditors, and as it appears manifest that this view of the subject is correct, such accounts have not been examined or reported; but the executor has been credited with all payments to them.

3. It appears that, of the assets of the estate of Dr. Elijah Gillett yet to be collected, there remains only the balance of Gray's bond, (after deducting the payments charged to the executor,) amounting to about $430, with interest from November, 1827.

4. The negroes sold by the marshal consisted chiefly of those which the executor had purchased at the sale made by himself.

5. In the return made to the ordinary, neither the names of purchasers nor the times of payment are given. A book, purporting to be the sales book of the auctioneer, was submitted. On account of the manner in which this book appears to have been kept, no accurate information can be derived from this source. It furnishes, however, the names of the purchasers which are subjoined to this report. From the mode in which the business was conducted, it would seem the executor intended that he should be regarded as the purchaser of the whole property, excepting only the sales made to Scarborough and Gray, for he charges himself immediately with the total amount of the bonds. There is a balance due upon Gray's bond, as before noticed, and Scarborough's is considered lost; the property mortgaged having been removed out of the State, and Scarborough being insolvent. The defendant, by the death of his brother Alexander, became entitled to one-fifth of the plantation called Richmond Hill, devised to Alexander. This place ap-

pears to have been sold under an arrangement made among the parties interested, to George W. Collins, for $7000. As, however, W. S. Gillett remained in possession of the said property for ten years, he is chargeable with $200 pr. an., which is considered a moderate rent, and which would exceed his proportion of the said property. The rent is therefore a fair set-off, and the share of W. S. Gillett is not brought into the general account. It was alleged that the executor should be charged with $1,442, arising from the sale of land belonging to his brother Aaron, who is still alive, but as this constitutes properly an item in an account between him and that individual legatee, it has not been, for that reason, introduced into the general account. James Higginbottom, who married Julia Gillett, one of the legatees, presented a claim against the estate of Dr. E. G amounting to $1,527, with interest from May, 1818. He likewise submitted a claim against W. S. Gillett upon his note of hand as executor of E. G., dated December, 1819, for $1,116 43, both which were acknowledged by W. S G. as justly due 17th Feb. 1825. If, however, the statement or general account submitted by the clerk be founded on correct principles, there is no fund whence this last claim can be satisfied, as the balance chargeable against the executor, (after deducting the proportion to which he is entitled as legatee,) viz. $48,766 92, greatly exceeds any amount which is likely to be raised from such property as is liable for his debts: such property cannot be reasonably estimated beyond $25,000.

Names of Purchasers at sale of estate, March 22, 1819.

W. S. Gillett,	7	*a* $410	$2,870.	James Furse,	6	*a* $570	$3,420.
do.	5	" 600	3,000.	Gideon Haygood,	7	" 400	2,800.
do.	4	" 560	2,240.	do.	4	" 460	1,840.
do.	6	" 430	2,580.	Stephen Owens,	3	" 820	2,460.
do.	5	" 540	2,700.	George Odam,	6	" 360	2,160.
do.	6	" 810	4,860.	William Brooker,	5	" 400	2,000.
do.	6	" 610	3,660.	Tho. Scarborough,	5	" 395	1,975.
do.	5	" 255	1,275.	John J. Gray,	3	" 322	966.
	44				39		
					44		
					83		

Statement of assets belonging to estate of W. S. Gillett.

This sum due for sale of personal estate made by Jas. Higginbottom, administrator, about - - - - -	$1,000
Amount of marshal's sales of negroes which were delivered to, and are in possession of purchasers, - - - - -	8,135
Interest on the bond given by the purchasers from Feb. 7, 1827, to negroes appraised as property of W. S. G. in possession of administrator, - - - - - - - -	6,095
Beldock mills, supposed value, - - - - -	7,000
	$

JAMES JERVEY, *District Clerk.*

Filed, July 15, 1831.

GENERAL STATEMENT

OF

ACCOUNTS BETWEEN EXECUTOR, WILLIAM S. GILLETT,

AND THE

ESTATE OF DR. ELIJAH GILLETT.

GENERAL STATEMENT of accounts between execu-

Cr.

1818 and 1819	By amount taken from account No. 1 -	$ 8,959 46	
	" " " " 3 -	4 50	
	" " " " 5 -	65	
			$ 9,029 21
	" Am't. pd. - - - -	9,029 21	
	" " rec'd. - - - -	22,968 45	
	" Com's 2½ pr. ct. on - - -	31,997 66	799 94
	" Balance due estate - - -	—	13,139 30
			22,968 45
1820	By amount taken from acco't No. 2 -	500 42	
	" " " " 5 -	667 02	
			1,167 44
	" Amo. pd. - - - -	1,167 44	
	" " rec'd. - - - -	28,898 75*	
	" Com's. 2½ pr. ct. on - - -	30,065 44	
			751 63
	"Balance due estate - - -	—	41,038 73
			42,957 80
1821	By amount taken from acc't. No. 2 -	3,022 79	
	" " " " 3 -	823 79	
	" " " " 5 -	12 00	
	" Advances to Julia, (Mrs. Higginbottom)	79 29	
			3,937 87
	Com's. 2½ pr. ct. on am't. pd. -	—	98 44
	Balance due estate - - -	—	39,875 13
			43,911 44
1822	By amount taken from acco't. No. 3 -	391 74	
	" " " " 4 -	389 03	
	" Advances to Julia, (Mrs. H.) -	255 75	
			1,036 52
	Com's. on amount pd. 2½ pr. ct. -	—	25 91
	Balance due estate - - -	—	41,603 95
			42,666 38

*It was not discovered, until after this account was copied, the report completed and sub-
which the calculations were made. As it would make but a very inconsiderable difference, I
charge of the commissions on the "*75 cts.*"

tor, Wm. S. Gillett, and the estate of Dr. Elijah Gillett.

DR.

1818 and 1819	To amount received taken from acco't. No. 1	–	$17,076 45
	" Estimated or average value of twelve negroes not accounted for by ex'or. *a.* 491 - - -	–	5,892 00
			22,968 45
1820	To balance due estate - - -	–	13,139 30
	" Amount of bonds - - -	$28,398 75	
	" Sale of Polly to Mrs. Yates - -	500 00	
			28,898 75
	" Int. on balance - - -	–	919 75
			42,957 80
1821	To balance due estate - - -	–	41,038 73
	" Interest balance - - -	–	2,872 71
			43,911 44
1822	To balance due estate - - -	–	39,875 13
	" Interest on balance - - -	–	2,791 25
			42,666 38

mitted to the parties, that this item "*75 cts.*" was not transferred in the rough account upon have not thought it necessary to alter all the calculations. The error consists only in the

GENERAL STATE-

CR.

1823	By amount taken from acco't. No. 4 -		$ 705 93	
	" " " " 5 -		148 07	
	" Advances to Julia, Mrs. H. -		236 07	
	" " Lucy, Mrs. Collins		100 00	
				$ 1,190 07
	Amo't. pd. - - - -		1,190 07	
	" rec'd. - - -		650 00	
	Com's. 2½ pr. ct. - - -		1,840 07	46 00
	Balance due estate - - -		-	43,809 13
				45.045 20
1824	By amount taken from acco't. No. 5 -		197 41	
	" " " " 6 -		732 01	
	" Advances to Julia, (Mrs. H.) -		199 18	
	" " Lucy, (Mrs. C.) -		188 50	
	" " Lavinia, (Mrs. Powell) -		210 00	1,527 10
	" Com's. on amount pd. - -		1,527 10	
	" " " rec'd. - -		152 50	
			1,679 60	41 99
	Balance due estate - - -		-	45,229 29
				46,798 38
1825	By amount taken from acco't. No. 6. -		337 56	
	" " advance to Julia, Mrs. H. -		404 00	
	" " " Lucy, Mrs. C.		393 00	
	" " " Lavinia, Mrs. P. -		30 00	
				1,164 56
	Com's. on amount pd. - -		-	29 11
	Balance due estate - - -		-	46,883 04
				48,076 71
1826	By amount advanced to Julia, Mrs. H. -		444 87	
	" " " Lucy, Mrs. C.		677 60	
	" " " Lavinia, Mrs. P.		85 59	
	" " Taxes estate, property -		30 28	
				1,238 34
	" " Com's. on amount pd. -		-	30 96
	Balance due estate - - -		-	48,461 16
				49,730 46

MENT—Continued.

				Dr.
1823	To balance due estate - - -		–	$41,603 95
	" Amount received on Scarborough's bond		$ 300 00	
	" " " Gray's do -		350 00	
				650 00
	" " Int. on balance of principal -		39,875 13	2,791 25
				45,045 20
1824	To balance due estate - -		–	43,809 13
	" Amount received on Gray's bond		–	152 50
	" Interest on balance principal - -		39,875 13	
	do amount rec'd. 1823 -		650 00	
			40,525 13	2,836 75
				46,798 38
1825	To balance due estate - - -		–	45,229 29
	" Interest on balance of principal	40,525 13	2,836 75	
	" " amount received, 1824,	152 50	10 67	
		40,677 63		2,847 42
				48,076 71
1826	To balance due estate - - -		–	46,883 04
	" Interest on balance of principal -		–	2,847 42
				49,730 46

GENERAL STATE-

CR.

1827	By amount advances to Julia, Mrs. H. -	$ 65 68	
	" " " Lavinia, Mrs. P.	156 75	
	" " " Aaron, - -	111 00	
	" " " Alexander, -	120 21	
	" " Taxes, - - -	30 28	
			$ 483 92
	" " Com's. on amount pd. -	483 92	
	" " " " rec'd. -	150 00	
		633 95	15 84
	Balance due estate - - -	–	50,958 82
		–	51,458 58
1828	By amount advances to Lavinia, Mrs. P.	50 00	
	" " Taxes - - -	30 28	80 28
	" " Com's. on amount pd. -	–	2 00
	Balance due estate - - -	–	53,734 46
			53,816 74

MENT—Continued.

				Dr.
1827	To balance due estate - - -		–	$48,461 16
	" Amount received on Gray's bond -		–	150 00
	" Interest on balance of principal -		–	2,847 42
				51,458 58
1828	To balance due estate - - -		–	50,958 82
	" Interest on balance principal, 40,677 63		$ 2,847 42	
	" " $150 received 1827, 150 00			
			10 50	2,857 92
		40,827 63		53,816 74
1829	To balance due estate - - -		53,734 46	
	" Interest on $40,827 63, to July 11, 1831		7,224 18	
				60,958 64
	" $\frac{1}{5}$ - - - - -		60,958 64	
			12,191 72	12,191 72
	Balance due by ex'or. - -		–	$48,766 92

Exceptions.

UNITED STATES OF AMERICA, *Sixth Circut, South Carolina District:*

BANK OF THE STATE OF GEORGIA *vs.* WILLIAM S. GILLETT and others.

Exceptions to the report of James Jervey, esquire, taken by complainants.

1. That the report charges Mr. Gillett with the price of twelve negroes which he retained as his part of his father's estate, and with which he ought not to be charged at all.

2 That the price at which said negroes are charged, viz. 491 dollars per head, is excessive.

3. That the report charges Mr. Gillett with the negroes set down to him at his own sale as a purchaser, which is irregular; because the sale was void and not binding on the devisees of Dr. Elijah Gillett. And so the said Mr. Gillett should be charged with the hire of said negroes, and no more.

4. Because the report charges Mr. Gillett, in 1820, with 500 dollars for the sale of Polly to Mr. Yates; whereas the slave in question was either the property of William S. Gillett himself, or else is included in the number of those already charged to him.

5. Because the report brings down the interest account to July, 1831; whereas the amount of sales made by the marshal should be credited as a payment made at the time, more especially as the property was bought in for the benefit of the defendants, and no money paid, and the defendants have had the benefit of the property from that time. For which reasons the complainants except to the said report, and appeal therefrom to the judgment of this honorable court.

PETIGRU & CRUGER, *Comp'ts' Solicitors.*

Filed, July 15, 1831.

The defendant, James Higginbottom, excepts to the report of the clerk as to that part which states that there is no fund out of which the claim of $1,116 43 could be paid; whereas it is submitted, as the note of the executor was taken for an account against the estate, and against the executor as executor, it ought to be reported as a preferred debt against the estate of Elijah Gillett. The same defendant as adm'or of Wm. S. Gillett, also excepts on the ground that, since making up the report, he has discovered a deed of gift of Dr Elijah Gillett to his son Wm. S. Gillett, dated for three negroes, Robin, Kate, and Polly; so that Wm. S. Gillett ought not to be charged therewith; and although he appears to have substituted, without any lawful authority, another slave named Lymas, for Robin, and to have sold Lymas instead of Robin, yet as they are of equal value, and Robin is now in the possession of this defendant, he ought not to be charged.

THOS. S. GRIMKE,
for J. H., *Adm'or of W. S. G.*

Filed, July 15, 1831.

Decree.

BANK OF THE STATE OF GEORGIA *vs.* GILLETT and others.—*Decree.*

The object of this bill is to set aside the judgment confessed to Higginbottom and Provost, so as to let in the junior judgment confessed to the com-

plainants to be first satisfied out of the estate of W. S. Gillett. This presents two questions: 1. Shall the judgment be set aside? 2. How far shall the complainants be let in for satisfaction according to the prayer of the bill? 1. The grounds on which the judgment is sought to be set aside, are, that it originated in, and holds its existence upon the purchase of negroes at the sale of the estate of the father, which, being void, the judgment must fall with it; and that being in debt to complainants at the time of confessing that judgment, and being an arrangement made in favor of brothers and sisters, it is a voluntary settlement within the policy of the statute against fraudulent conveyances, if not within its letter. Had the judgment been confessed for the sole purpose of securing to the co-heirs their interest in the proceeds of the sale and purchase by W. S. Gillett, there would have been less difficulty in the case, but the uncontradicted answer of Higginbottom must guide us on this subject; and he declares that the object of the judgment was twofold, as well to secure the shares in that sale, as the general balance, whatever it might be, that W. S. Gillett should finally appear to owe to the estate, including the proceeds of the sale of such negroes of the estate as were sold to others, and not bid off to himself. So far it was a correct and conscientious act, and the children co heirs must not be deprived of the benefit of it. But as to the amount of W. S. Gillett's purchase at the sale, the question stands thus: Can the children, by their assent, give effect to a sale which never had existence? Had there been a nominal purchaser interposed, making out competent persons to contract in law, the case would be a very clear one; the consent of the co-heirs, or of those who in effect became their trustees by virtue of the judgment, would have bound W. S. Gillett, and all claiming by, through, or under him. But here is no sale at all; nothing done which could produce any change in the relation in which this property and these parties stood to each other. It was still the property of the father's estate, and, as such, could have been made liable on plena administravit for the father's debts. It is clear then, that, as to the purchase money of these negroes, so far as it constituted an item in the sum to be secured, this judgment ought, on this view of the subject, to be set aside. But what are we to do now? A sale has been made, by one marshal, of these negroes, as the property of W. S. Gillett, under the judgment of these compl'ts., and the proceeds are substantially in one registry. Does not this confirm the sale, at least as against them? I think not: there was no sale in fact, there could be none in effect, and the sale by the marshal is no more than a sale of the father's estate for the debt of the son—the sale of a testator's estate for the debt of the executor: the same cause which invalidates the assent of the co-heirs, sustains the same conclusion as to the assent of these parties: there is no evidence that the act was done with that intent, or fraudulently done, and it ought not therefore to conclude the complainants. Nor will any serious inconvenience result from this conversion of the specific property into a pecuniary representative, since, in consequence of the actual sale of a part, and the general liability under the judgment to Higginbottom, the court must ultimately have ordered a sale in order to make a final decree; or, to make a specific distribution, there must have been an appraisement, and a public sale is the fairest of appraisements. We must, for these reasons, set aside the sale, retain the judgment to Higginbottom as a security for the general balance due by W. S. Gillett, independent of this purchase, and act upon the proceeds in the marshal's hands as we would have acted on the specific pro-

perty. This view of the case renders it necessary that a new account between W. S. Gillett and the estate of his father should be stated, in which it is obvious that, since he gets clear of the interest on the purchase on most of the slaves, and worked them as his own, he must be charged with a reasonable hire for the services of that proportion of them upon the principle of paying all their expenses. As to those slaves that were actually sold, he must be charged with interest on the sales; but, as there are no directions in the will to put the money out on interest, I cannot perceive any more equitable mode of stating the accounts than by making a separate interest account on each item as well debits as credits, and striking the balance. Hire or interest for the slaves the family ought to have, but by possibility this might operate injustice on the executor unless he, too, were allowed interest. In making up this account, it is obvious that if W. S. Gillett made use of any lands of the estate, besides his own, for working the negroes on his individual account, he must be charged with a reasonable rent. But his joint interest in his deceased brother's land will have to be subjected to his debts in the same way with the Beldock plantation. As to the slaves which it is said have been conveyed by gift to one of the sons, they must be recovered specifically in legal form, and cannot be noticed in this decree. But as to their hire, it must constitute a separate item, and I at present see no reason why that co-heir may not have the benefit of the judgment to Higginbottom for his security to that amount also. He is in possession of the legal remedy, and I know not on what principle we can divest him of it. As to the unsatisfied debts of the father, it is clear that they must have a priority, and of these also, the amount must be correctly reported. A decree will be signed accordingly, and the case sent back to the register to enable us to make it in specific amounts.

Orders.

TUESDAY, *the 29th of November*, 1831.

The circuit court met according to adjournment. Present, his honor Thomas Lee.

THE BANK OF GEORGIA, *vs.* GILLETT and others. } *In Chancery.*

It being represented to the court that a settlement of this case cannot be finally made, without a sale of the property both of the estate of Dr. Elijah Gillett and of his son Wm. S. Gillett, and that it is for the interest of all concerned that a sale thereof should be made at an early day in the next year: It is therefore ordered, with the consent of parties, both plaintiff and defendant, represented by their respective solicitors, that the marshal of this court do sell at Barnwell court-house, on the usual sale day in January next, the real estate of Wm. S. Gillett, on the following terms, viz. as much as will cover the expenses of the sale in cash, the balance in a bond, secured by mortgage of the property and approved personal security, payable in one and two years. That the administrator of Wm. S. Gillett do also sell, at the same time and place, the personal estate of said William on the same terms; and that the administrator, with the will annexed, of Dr. Elijah Gillett do sell

his personal estate at the same time and place and on the same terms, except that he shall demand five per cent. cash; and that accounts of said sales be forthwith rendered to this court, and the cash, if any remain after paying the expenses of the sale, and the securities, be held subject to the further order of this court.

It appearing to the court, on the representation of the defendants in the cause with the assent of the complainants, that the order heretofore made in the cause, for the sale of the property at Barnwell court house, on the usual sale day in January next, cannot be executed at the appointed time and place to the advantage of all concerned; it is therefore ordered, with the consent of the plaintiffs and defendants, represented by their respective solicitors, that the sales heretofore ordered at the abovementioned time and place, do take place at the Beldock mills, in Barnwell district, on Monday the twenty-third day of January next, and that the marshal, and the administrators of Dr. Elijah Gillett and of William S. Gillett, do give notice accordingly.

It appearing in this case that the former order of sale omits to mention that interest is to accrue on the bonds to be taken by the marshal and the administrators of Dr. Gillett and of Wm. S. Gillett; ordered and decreed, with the consent of the complainants and defendants, that the marshal and the administrators give notice of the same prior to commencing the sale.

Report and Account.

THURSDAY, *the 19th of July*, 1832.

The circuit court met according to adjournment. Present, his honor William Johnson.

The following report and exceptions thereto were read:

Report, April Term, 1832.

The clerk has prepared, and herewith submits, an account marked A, between William S. Gillett and the estate of his father, upon the principles directed by the decree of this honorable court, pronounced in this case, April term, 1831, from which account it will appear that the balance due by the said William S. Gillett to the estate of his father, Dr Elijah Gillett, amounts to thirty-three thousand and forty-eight dollars forty-nine cents. The executor, W. S. Gillett, is not charged with rent for Richmond Hill; it being proved, on the investigation of the case, that the expenses of repairs incurred by W. S. Gillett were equal to the rent. By the death of his brother Alexander, W. S. Gillett became entitled to one-fifth of the plantation called Richmond Hill, devised to Alexander by the father: this land appears to have been sold, under an arrangement made among the parties interested, to George W. Collins, for $7,000. For one-fifth of which, being $1,400, with interest from the date of the arrangement, the estate of W. S. Gillett is entitled to credit in account with the other heirs; and that amount, or whatever may be realized from the sale to Collins, must be subjected to the debts of W. S. Gillett in the same way with the Baldock plantation. Of the slaves conveyed by deed of gift to W. S. Gillett, by the father, viz. Robin, Kate or Catharine, and Polly, the two latter have always remained where placed by W. S. Gillett; his intention has been fulfilled, and the disposition of them by W. S. Gillett has never been disturbed. The former was sold last February by James Higginbottom, the administrator, as the property of W. S. Gillett, and

is subject, in his hands, to the payment of his intestate's debts, (unless in point of fact, the same slave was likewise sold by the marshal at his sale, as is believed to have been the truth.) It appeared that the executor, in the year 1820, sold a fellow named Lymas for the sum of $500: he is therefore charged with that amount, and interest to this time. Two claims were submitted against the estate of Dr. E. Gillett by James Higginbottom—the one arising out of a note given by the said Dr. G.; the amount of the note appears to have been - - - - - $1,627 22
A payment is acknowledged and endorsed on a note of - 100 00

Leaving balance on January 1, 1818 - - - 1,527 22
Interest to July 1, 1832 - - - - - 1,550 12

Making - $3,077 34

Which is reported as a claim against the estate of Dr. E. Gillett. The other was a note of W. S. Gillett, the executor of Dr. E. Gillett, for $1,116$\frac{43}{100}$, a balance of various accounts, including the sum of $2,151$\frac{37}{100}$, being an account against Dr. Gillett in his life time, for which it appears that the executor had taken a credit in his account as executor, with the knowledge and sanction of James Higginbottom, who, in his books, closed the account at the request of W. S. Gillett, and took his note for the balance. The estate of Dr. E. Gillett is thereby discharged, and James Higginbottom must accordingly look to W. S. Gillett, individually, for the payment of said note. It is not denied that the amount of all the bonds given for the sale of the negroes of the estate of Dr. E. Gillett was received by the executor, except of those of Gray and Scarborough, and it is made to appear, very evident, that there was great negligence, on the part of the executor, in respect to these debts. He is charged with the amount, but should any part hereafter be recovered, it will be to the credit of W. S. Gillett's estate. I find that the assets of W. S. Gillett, exclusive of his part of his father's estate, amount to $9,440 98; and that the said assets, subject in the first place to the costs and charges of this suit, should be paid to Higginbottom and Provost in satisfaction of their judgment as far as the same will go: after exhausting all the assets of W. S. Gillett, including his share of his father's estate, there will be a deficiency of $14,138 66 remaining due to the devisees of Elijah Gillett from the estate of the said W. S. Gillett, as appears by the statement below.

JAMES JERVEY.

Statement of am'ts. subject to the debts of W. S. Gillett.—Est. of Elijah Gillett.

Amount of sales by the marshal, with int. thereon to this time, $11,043 76
" bal. sales by Powell, adm'or of E. G. of remaining property, 6,329 34

17,373 10
Balance due by W. S. G. as ex'or of E. G. pr. ac., - - 33,048 49

50,421 59
Deduct debt due by est. of E. G. to J. Higginbottom, - 3,077 34

5) 47,344 25

To $\frac{1}{5}$ of which W. S. G. is entitled as one of the residuary legatees, $9,468 85

Est. of W. S. Gillett.

His share as above on $\frac{1}{7}$ of his father's estate, - - -	$9,468 85
Amt. sales Beldock mills, - - - - -	4,315 98
Bal. due on the acc't of his adm'or not yet closed with the ordinary, which cannot exceed, as 'tis believed, but may fall short of - - - - - -	2,500 00
W. S. Gillett's int. in Richmond Hill, estimated at - -	2,625 00
	18,909 83
Deficit to make up the am't due by W. S. G. to his co-devisees and legatees - - - - - -	14,138 66
	33,048 49

ACCOUNT between Wm. S. Gillett, executor,

DR.

		Interest.		
1818	To am't rec'd from sale of est.			
'19	cash - - - - -	-	$11,280 20	
	" bonds - - - - -	-	13,215 75	
				$24,495 95
	" hire of negroes - -	-	-	1,095 00
				$25,590 95
1820	To balance due estate - -	-	15,996 28	
	" am't rec'd for Lymas, belonging to estate - -	-	500 00	
	" " charged ex'or for hire of negroes - - -	-	1,095 00	
				17,591 28
	" int. on am't rec'd by ex'or 1819, - - 25,590 95	$ 1,791 36		
1821	To balance due estate - -	-	16,340 38	
	" hire of negroes - -	-	1,875 00	
	" int. on amt. rec'd by ex'or			18,215 38
	1819, - - 25,590 95			
	1820, - - 1,595 00			
	27,185 95			
		1,903 01		

Cr.

		Interest.		
1818 '19	By am't pd. ex'or., taken from account No. 1 -	-	$ 8,519 44	
	" " " No. 3 -		4 50	
	" " " No. 5 -	-	68 25	
	" auctioneer's comm's -	-	244 95	
				$ 8,834 14
	" ex'or com's on am't. received - - 24,495 95			
	" paid 8,834 14			
	deduct pd.			
	to self 2,908 71 5,925 43			
	a 2½ 30,421 38	-	-	760 53
	" balance due estate - -	-	-	15,996 28
				25,590 95
1820	By am't pd. by ex'or taken from acc't No. 2 -	-	500 42	
	" " " No. 5 -	-	667 02	
				1,167 44
	" ex'or's com's on am't received - - 500			
	" int. of 1819 1,791 39			
	pd by ex'or 1,167 44			
	deduct pd.			
	to self 120,38			
	1,047 06			
	a 2½ - - 3,338 42	-	-	83 46
	" int. on amt. pd. by ex'or 1819 - - 8,834 14	618 38		
	" balance due estate - -	-	-	16,340 38
				17,591 28
1821	By am't pd. by ex'or taken from acc't No. 1 -	-	3,022 78	
	" " " No. 3 -	-	823 79	
	" " " No. 5 -	-	12 00	
	" advances for Julia, Mrs. Higginbottom - -	-	79 29	
				3,937 87

ACCOUNT—

DR.

			Interest.		
1822	To balance due estate - -		-	$14,131 49	
	" hire of negroes - -		-	1,875 00	
	" int. on amt. rec'd by ex'or above - -	27,185 95	-		$16,006 49
	1821, - -	1,875 00			
		29,060 95			
			$2,034 26		
1823	To balance due estate - -		-	14,893 21	
	" hire of negroes - -		-	1,510 00	
				16 403 21	
					16,403 21
	" int. on am't rec'd. by ex'or above - -	29,060 95			
	1822 - -	1,875 00			
		30,935 95			
			2,165 51		

Continued.

			Interest.		
1821	By ex'or com's on am't pd. -	$3,937 87			
	" int. due this year	1,903 01			
	a 2½ - -	5,840 88	-	-	$146 02
	" int. on am't pd. by ex'or above - -	8,834 14			
	" 1820 - -	1,167 44			
		10,001 58	$700 11		
	" balance due estate - -		-	-	14,131 49
					18,215 38
1822	By am't pd. by ex'or taken from acc't No. 3 -		-	391 74	
	" " " No. 4 -		-	389 03	
	" advances for Mrs. H. -		-	255 75	
	" ex'or's com's on am't paid - -	1,036 52			1,036 52
	" int. due this year	2,034 26			
	a 2½ - -	3,070 78	-	-	76 76
	" int. on am't pd. by ex'or above - -	10,001 58			
	" 1821 - -	3,937 87			
		13,939 45	975 76		
	" balance due estate - -		-	-	14,893 21
					16,006 49
1823	By am't pd. by ex'or taken from acc't No. 4 -		-	705 93	
	" " " No. 5 -		-	148 07	
	" advances to Mrs. H. -			236 07	
	" " Mrs. Collins, Lucy		-	100 00	
					1,190 07
	" ex'or's com's on amt. pd.	1,190 07			
	" int. due this year	2,165 51			
	a 2½ - -	3,355 58	-	-	83 88

ACCOUNT—

DR.

			Interest.		
1824	To balance due estate - -		-	$165,129 2	
	" hire of negroes - -		-	1,510 00	
				16,639 26	$16,639 26
	" int. on am't rec'd by ex'or above -	$30,935 95			
	1823 - -	1,510 00			
		32,445 95			
			$2,271 21		
1825	To balance due estate - -		-	15,017 21	
	" hire of negroes - -		-	1,510 00	
					16,527 21
	" int. on am't rec'd by ex'or to 1824 -	- 32,445 95			
	1824 -	- 1,510 00			
		33,955 95			
			2,376 91		

Continued.

Cr.

			Interest.		
1823	By int. on am't pd. by ex'or above	13,939 45			
	" 1822 -	1,036 52			
		14,975 97	$ 1,048 31		
	" balance due estate - -		-	-	$15,129 26
					16,403 21
1824	By am't pd. by ex'or, taken from acc't No. 5 -		-	$ 197 41	
	" " " " 6 -		-	732 01	
	" advances to Mrs. H. -			199 18	
	" " Mrs. C. -		-	188 50	
	" Mrs. Powell, Lavinia			210 00	
					1,527 10
	" ex'or's com's on am't pd. -	1,527 10			
	" int. due this year	2,271 21			
	a 2½ - -	3,798 31		-	94 95
	" int. on am't pd. by ex'or above - -	14,975 97			
	" 1823 -	1,190 67			
		16,166 04	1,131 66		
	" balance due estate - -			-	15,017 21
					16,639 26
1825	By am't pd. by ex'or taken from acc't No. 6 -		-	337 56	
	" advances to Mrs. H. -			464 00	
	" " Mrs. C. -			393 00	
	" " Mrs. P. -			30 00	
	" com's on amt. pd.	1,164 56			1,164 56
	" int. due this year	2,376 91			
	a 2½ - -	3,541 47		-	88 53
	" int. on am't pd. by ex'or to 1824 - -	16,166 04			
	" 1824 - -	1,527 10			
		17,693 14	1,238 51		

ACCOUNT—

Dr.

			Interest.		
1826	To balance due estate - -		-	$15,274 12	
	" hire of negroes - -		-	1,510 00	
					$16,784 12
	" int. on am't rec'd by ex'or				
	to 1825 - -	33,955 95			
	1825 - -	1,510 00			
		35,465 95			
			$ 2,482 61		
1827	To balance due estate - -		-	15,483 80	
	" hire of negroes - -		-	1,510 00	
				16,993 80	16,993 80
	" int. on am't rec'd by ex'or				
	to 1826 - -	35,465 95			
	1826 - -	1,510 00			
		36,975 95			
			2,588 31		

Continued.

Cr.

			Interest.		
1825	By balance due estate - -		-	-	$15,274 12
					16,527 21
1826	By am't pd. by ex'or advances to Mrs. H. - - -		-	$ 444 87	
	" " Mrs. C. - - -		-	677 60	
	" " Mrs. P. - - -		-	85 59	
					1,208 06
	" com's on am't pd. by ex'or - -	1,208 06			
	" int. due this year	2,482 61			
	a 2½ - -	3,690 67	-	-	92 26
	" int. on am't pd. by ex'or to 1825 - -	17,693 14			
	" 1825 - -	1,164 56			
		18,857 70	$ 1,320 03		
	" balance due estate - -		-	-	15,483 80
					16,784 12
1827	By am't pd. by ex'or, advances to Mrs. H. - - -		-	65 68	
	" " Mrs. P. - - -		-	156 75	
	" " Aaron - - -		-	111 00	
	" " Alexander - -		-	120 21	
					453 64
	" com's on am't pd. by ex'or. - -	453 64			
	" int. due this year	2,588 31			
	a 2½ - -	3,041 95	-	-	76 04
	" int. on am't pd. by ex'or to 1826 - -	18,857 70			
	" 1826 - -	1,208 06			
		20,065 76			
			1,404 60		
	" balance due estate - -		-	-	16,464 12
					16,993 80

ACCOUNT—

DR.

			Interest.		
1828	To balance due estate - -		-	$16,464 12	
	" hire of negroes - -		-	1,510 00	
					$17,974 12
	" int. on am't rec'd by ex'or				
	to 1827 - -	36,975 95			
	1827 - -	1,510 00			
		38,485 95			
			$ 2,694 01		
1829	To balance due estate - -		-	17,855 52	
	" int. on am't rec'd by ex'or				
	to 1828 - -	38,485 95			
	1828 - -	1,510 00			
		39,995 95			
	To July 1, 1832, 3 yrs. ½ -		9,798 98		
			30,106 17	30,106 17	
				47,961 69	
1832	To balance due estate - -		-	33,048 49	

Continued.

Cr.

			Interest.		
1828	By am't paid by ex'or -		-	$ 50 00	$ 50 00
	" com's on am't pd. by ex'or - -	50 00			
	" int. due this year	2,694 01			
	a 2½ - -	2,744 01	-		68 60
					118 60
	" int. on am't pd. by ex'or to 1827 - -	25,065 76			
	" 1827 - -	453 64			
		20,519 40	$ 1,436 85		
	" balance due estate - -		-	-	17,855 52
					17,974 12
1829	By int. on am't pd. by ex'or to 1828 - -	20,519 40			
	" 1828 - -	50 00			
		20,569 40			
	To July 1, 1832, 3 yrs. ½		5,039 49		
			14,913 20	-	14,913 20
	" balance due - - -		-	-	33,048 49
					47,961 69

Exceptions.

Exceptions taken by the complainants to the report of Mr. Jervey, dated July, 1832.

1. Because the said report finds that the assets of Wm. S. Gillett are to be applied, after paying the costs of this suit, to the payment of the judgment of Higginbottom and Provost. But in fact the said judgment was confessed to persons to whom W. S Gillett was not indebted at the time, and upon a trust, not declared in writing until long afterwards, and after complainants had recovered their judgment against him; and then declared in favor of his father's divisees, to whom, at the date of the said judgment, he was not indebted in the sum of 30,000, or in any such sum. Therefore, the complainants insist that the judgment of Higginbottom and Provost is either void against creditors altogether, or available only as a security for so much as appears on the report to have been due to the devisees of E. Gillett at the date of the said judgment; or at all events for so much as was due to them on the 17th day of October, 1821, when the complainant's judgment was recovered.

2. Because the report should have found that the judgment of the plaintiffs is entitled to a priority, and ought to be paid in preference to all other creditors of W. S. Gillett, or at least to the judgment of defendants: or, at all events, to such of the debt claimed by the defendants' devisees of E. Gillett, as accrued after plaintiff's judgment was entered of record.

PETIGRU & CRUGER, *Compl'ts' Sol'ors.*

The defendant, James Higginbottom, excepts to the report, on the ground that the master has disallowed the note of Wm. S. Gillett, ex'or of Dr. Gillett, to Higginbottom, for a debt due by Dr. G. at the time of his death, on open account, because he insists that the note was not a payment or satisfaction of the original account.

THOS. S. GRIMKE,
for JAS. HIGGINBOTTOM.

The court heard Mr. Petigru for complainants, and Mr. Grimke for defendants.

Final Decree.

MONDAY, *the 23d of July*, 1832.

The circuit court met according to adjournment. Present, his honor William Johnson.

Decree.

This case is now reduced to very narrow limits: the court has only to dispose of the exceptions to the master's report, one of which has been filed by the defendant, and two by the complainant. That filed by the defendant, it is very clear, cannot be sustained; indeed it has been abandoned by the solicitor. The original contract with the testator had been relinquished, and a new contract created, and expressly understood, as the facts clearly prove, to have been created in extinguishment of the original contract. It cannot then be revived, because of the insolvency of the second contractor. The two

exceptions in behalf of complaint, are, I think, the same, presented in different aspects. This cause has undergone investigation in two instances previous to the present. In June, 1829, the question of the validity of the judgment to H. and P. was argued, and the court then held that it was unimpeachable under the stat. of frauds, and could be sustained for any amount due the minors. It then came on to be considered, on what principles that amount was to be determined; and the court decreed the sale by Gillett, the ex'or to be void, so that the amount should not be added to his debt, but the property sold to be specifically divided. As, however, the proceeds were, in fact, in our registry under a sale by our marshal, which no one was disposed to disturb, and it was thought to furnish the data for a fair distribution, the court instituted the necessary inquiries to enable it to proceed to a final decree. The master has now reported on the reference then made to him: and the object of the complainant's exceptions is to raise the questions, 1st. Whether the judgment confessed to defendants can be considered as a subsisting judgment, since there was, in fact, nothing due at the time it was confessed? 2d. Whether it could be upheld for more than what was due when it was confessed, considering the cestui que trusts are the actual creditors? 3d. Or at most for so much as was due the co-devisees of W. S. Gillett at the time of entering up the judgment under which the complainants seek to come in upon his estate? 4th. Whether the complainants are not at least entitled to priority as to whatever W. S. Gillett held in severalty under his father's will or otherwise? The first of these questions was in effect considered and decided in June, 1829, but I have again turned over the subject in my thoughts, and have no reason to be dissatisfied with the opinion then expressed. I regarded the judgment as in nature of the penalty of a bond defeasible upon contingencies of a continuing character, such as payment of rents for a long time, indorsement of notes, fulfilment of covenants, &c.; and considering the debt as already initiated, and the object not only just and equitable in its general character, but particularly entitled to the favorable consideration of this court, since orphans and minors were the persons to be benefitted, I did not hesitate to declare it "maintainable for any amount that shall be shown to be justly due the minors." The 2d and 3d questions stated, are disposed of by the same view of the subject, and in fact it would but little avail the complainant to sustain him on the points which he here presents or either of them, as in either case it would appear that he could gain but little, if any thing—on the first certainly nothing; for, at the date of the judgment to H. and P., it would appear that he owed 16,000 dollars more than his separate estate is valued at, and, in 1821, when the judgment to complainants is entered up, the balance against him, after exhausting his several interests, would have exceeded $3,000. These estimates are made on the principle of excluding the item of $9,468 89, which, being a blended and joint interest, it is not contended can be charged with any other debt until the co-devisees are satisfied. The only question then is upon the application of the proceeds of the several property of W. S. Gillett. Is there any ground for giving precedence to the junior judgment as to that interest? And here it would seem that the answer to this comes very near a corollary to the decision on the first question; for if it be a continuing judgment to any purpose, why not to this? In fact to what other purpose after the distributive shares of the other property are taken away from its operation? But there would be no difficulty in disposing of this as an uncommitted question.

On what principle is it, that the complainant claims the interference of this court on the equity side on his behalf? Certainly on no other, but the superior legal right of his adversary. He is then bound to show a superior equity, and that he cannot do, for both are cases of debts fairly due: and in fact the debt due to the real creditor, on the elder judgment, has the superior equity of its being one of the offices of equity jurisdiction to take care of those who are not well able to take care of themselves. If this court only refuses its aid to the complainants, it is enough for all the purposes of defendants, since it will follow that the marshal must pay over to the latter; and this is all this court would be called upon to do, if it had not been found necessary to take into consideration other interests in the progress of this suit, and to reduce the property into the hands of our officers.

Whereupon, it is ordered and decreed, 1st. That the said exceptions to the said report be overruled, and the report and account therewith stated be affirmed. 2. That the funds in the hands of the clerk, as master, be paid over in the following manner; that is to say: James Higginbottom, in right of his wife Julia, one fourth part; to George W. Collins, in right of his wife Lucy, one fourth part; to the Rev. J. J. S. Powell, in right of his wife Lavinia, one fourth part; and to Aaron Gillett the remaining fourth part; and, lastly, that each party pay his own costs.

Letters.

COOSAWHATCHIE, So. Ca., *June 30th*, 1821.

A. PORTER, Esq. *Cashier*
of the Bank of Georgia.

SIR: I am requested by William S. Gillett to negotiate with the directors of the bank for an indulgence in paying the amount due that institution. As that indulgence, if obtained, would create an additional obligation of a moral character on his part, he is unwilling to ask it, without affording to the bank an earnest of the sincerity with which it would be performed. To that end, he proposes that he will confess a judgment in Carolina for the amount due, on receiving an indulgence of one, two, three, and four years, in equal instalments; the *interest* on the *whole amount* to be paid *semi-anually*. He will satisfy the bank that their judgment will bind a sufficiency of real and personal estate to satisfy the demand, and, of course, they will be allowed to enforce payment of each instalment, if default be made at the time it falls due. It may not be amiss that I should here obviate an objection which may arise out of the recollection of a late case in this court in which the bank was a party. I will not deny that doubts may exist whether the bank could sustain an action in this State, if resisted But that objection cannot grow out of the proposition now submitted; because Mr. Gillett, in the confession he will give, will waive all objections on that score, independently of which no objection of that sort could be made after the confession was given. Mr. Gillett has mentioned that an action is already pending in the State court of Georgia for the recovery of this demand. But it will readily occur to the directors, that, according to the common routine of jurisprudence, much time will necessarily elapse before a judgment can be obtained in Carolina on the judgment which may pass in Georgia. But it is not Mr. Gillett's object to throw any obstacles or difficulties in the way: and, while he

is anxious to do justice to the bank, he asks of them an extension of that indulgence which he has already experienced; and which, while it materially serves him, will secure their demand without in the least impairing their interests. Be so good as to lay this subject before the directors, and inform me, when your convenience will permit, of their determination.

Very respectfully, your ob't s'vt,

WM. D. MARTIN.

SAVANNAH, *July 7th*, 1821.

The Board of Directors of the Bank of the State of Georgia having, by their resolution of yesterday, determined to grant to Mr Wm. S. Gillett the indulgence asked for as per annexed letter of Wm. D. Martin, provided the endorsers on his paper will agree to the same, and provided, also, that the said Gillett will comply with the propositions in the said letter mentioned: We, the undersigned, endorsers on his paper in the hands of the Bank of the State of Georgia aforesaid, do hereby assent and agree to whatever arrangement or indulgence the said bank may make or grant to the said Gillett for the purpose of securing the debts due to the said bank by said Gillett; and we approve of the letter of Mr. Martin hereto annexed.

(Signed,) JNO. CARNOCHAN.
PETER MITCHEL.
CH'S. M. KING.
W SCARBOROUGH.

COOSAWHATCHIE, Lower 3 Runs, *August* 14, 1821.

WILLIAM D. MARTIN, Esq.

MY DEAR SIR: Your favor covering the answer of Antony Porter, esq., Cashier of the Bank of Georgia, was received on Tuesday last, and I must say the spirit of liberality and accommodation manifested by the board of directors for that institution, afforded me the greatest satisfaction. And had I not made proposals to the Planters' Bank similar to those made them, their conduct should decidedly claim preference. In both my respects to the cashier (receipts of them acknowledged,) I mentioned that similar offers would be made by you to the two institutions, and therefore, should both be accepted, the judgments to be confessed would bear the same date. But should the Planters' Bank decline accommodating me for the amount due them, six thousand three hundred dollars, I am ready to meet the views of the Bank of the State of Georgia either in the federal or circuit court of this State, as may be finally determined on, and grant obligations payable in equal annual instalments of one, two, three, and four years from the ratification of our agreement—interest at the rate of eight per cent. per annum, payable semi-annually. And whomsoever they authorize and appoint as their agent, I will satisfy that the property offered to be pledged, both real and personal, is unencumbered, or furnish them with the necessary documents to prove it so. By my deceased father's last will and testament, I became possessed of the real and personal estate. "Article fifth:" "to my son Wm. S. Gillett, I give and bequeath the whole of my Beldock establishment, houses, materials, as standing at the time of my death; also his proportion of, or the amount or value of the negroes I die possessed of; giving him the preference of such

negroes as have been in the habit of attending the mills." "Codicil first:" "The Beldock tract of land, so called, devised to my son Wm. S. Gillett by article fifth of my will and testament, comprehends the grant to my deceased father, of six thousand acres; the grant to George Keish of the land whereon the mills now stand, of one hundred acres; the tract called Bentley's old fields, of one hundred and fifty acres; and two tracts granted Jacob Swicord on Boggy gutt, of one hundred acres each." The tracts of land re-surveyed by Mr. John Allen, dep'y sur'r, in June, 1819, contain eight thousand seven hundred and sixty acres, on which are erected two new saw mills, grist mill, cotton gin, &c. &c., (geerings of the mills altogether of cast and wrought iron.) These, and other improvements made since the decease of my father, have cost near twelve thousand dollars, and twenty negroes, which were considered by Messrs. Carnochan and Mitchel sufficient collateral security for endorsations to the amount of thirty thousand dollars. Hoping my reply may enable you to lay a satisfactory statement before the directors, and obtain ends mutually satisfactory,

I remain, with great esteem and regard,
my dear sir, yours most truly,
WM. S. GILLETT.

DISTRICT CLERK'S OFFICE, So. Ca. Dist.
Charleston, November 14, 1832.

I do certify that these eighty-three pages of paper contain just and true copies of the proceedings had in the case of the Bank of Georgia vs. W. S. Gillett and others, which are of record in this office.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court.

JAMES JERVEY, *Dist. Clk.*

The United States of America to W. S. Gillett and others:

Citation. You are hereby commanded to be and appear before the Chief Justice of the United States, and his associates, in the Supreme Court of the United States to be holden at Washington, on the second Monday of January next, to hear the record and the proceedings on appeal in the suit wherein you were defendants, and the Bank of Georgia were complainants, and to answer to the same. Witness my hand at , this day of Anno Domini one thousand eight hundred and thirty-two.

We acknowledge service of this citation.
THOS. S. & HY. GRIMKE, *Def'ts' Solic'rs.*

THE UNITED STATES OF AMERICA, *South Carolina District:*

Copy bond. Know all men by these presents, that we, Anthony Porter and Stephen B. Williams, of the city of Savannah, county of Chatham, and State of Georgia, are held and firmly bound unto James Higginbottom, administrator of W. S. Gillett, and others, in the full and just sum of five hundred dollars lawful money of the United States of America, to be

paid unto the said James Higginbottom, administrator as aforesaid, and others, their certain attorney, executors, administrators, or assigns. To which payment well and truly to be made and done, we bind ourselves firmly, by these presents, sealed with our seals, and dated the 30th day of October, in the year of our Lord one thousand eight hundred and thirty-two, and in the fifty-seventh year of the independence and sovereignty of the said States. Whereas a decree has been obtained in the sixth circuit court of equity of the said States for South Carolina district, by the said James Higginbottom, administrator as aforesaid, and others, against the said Bank of Georgia; and whereas the said Bank of Georgia have since prayed an appeal to the Supreme Court of the United States at Washington: Now, the condition of the above obligation is such, that if the aforesaid Bank of Georgia, the appellants, shall prosecute their appeal to effect, and answer and pay all such damages and costs as shall be adjudged, if they fail to make their plea good, and in all respects conform to and abide by such order or orders as may be made in the premises, then, and in such case, the foregoing obligation shall be void, or else to be and remain in full force and virtue.

(Signed,) A. PORTER. [L. S.]
S. B. WILLIAMS. [L. S.]

Taken and acknowledged before me.
J. K. TEFT, *Notary Public.* [L. S.]

UNITED STATES OF AMERICA, *Sixth Circuit, So. Ca. District:*

THE BANK OF GEORGIA, *Complainant,*
vs.
W. S. GILLETT and Others, *Defendant.* } *Appeal.*

Petition. And afterwards, to wit, at the term aforesaid, to wit, on the day of , in the year, &c. the Bank of Georgia, complainants, by their attorney aforesaid, do hereby respectfully pray an appeal from the decision and decree of this honorable court, entered in the above cause, on the day of , to the Supreme Court of the United States, holden at *at* the Capitol, in the city of Washington, on the second Monday of January, in the year one thousand eight hundred and thirty-three; and the said attorney further prays this honorable court to order and direct that the process, pleadings, and other proceedings, with the evidence remaining of record, together with such further evidence as this honorable court may order to be taken in the said cause, and the decree of this court, be returned to the said Supreme Court of the United States on the day and at the place aforesaid, then and there to hear and determine the same; and it being agreed between the parties that the matters in controversy exceed in value the sum of two thousand dollars, exclusive of costs, it is ordered by the court the said prayer be granted and appeal allowed, on the complainant's giving bond in the sum of five hundred dollars, with security conditioned as the law directs.

The complainants appeal from the said decree, and hope the same will be reversed for the following, among other reasons:

1. That the promissory note which is the cause of action in the judgment of James Higginbottom and William Provost against W. S. Gillett, is with-